

# BAR BULLETIN

September 28, 2022 • Volume 61, No. 18

## MANDATORY Succession Planning Rule - effective October 1, 2022

On the 2023 Annual Registration  
Statement, New Mexico  
Attorneys will be required to  
certify their compliance  
with Rule 16-119 NMRA.  
*See page 9 for more details.*



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## CLE PLANNER

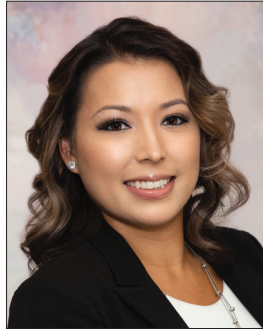
Upcoming Programming from the  
CENTER FOR LEGAL EDUCATION

# SUTIN WELCOMES OUR NEWEST ASSOCIATES



**Felecia N. Cantwell**

Felecia has developed a practice in civil litigation, regulatory and administrative law, employment, and contested probate matters. She was a Trial Attorney for the Office of the Second Judicial District and an associate for a major New Mexico law firm.



**Lisa Y. W. Cospier**

Lisa focuses on estate planning, trusts and probate. Prior to joining Sutin, she worked as an attorney in estate planning and administration for a specialty law firm with offices in Arizona and New Mexico. She frequently presents on planned giving and estate planning.



**Marcella Alvarez Morgan**

Marcella's litigation practice includes insurance defense, real estate and land use, cannabis, and healthcare. As an attorney for two Boston-based firms, she managed class action and multidistrict litigation and ADR. She is fluent in Russian.



**John F. S. Stiff, Jr.**

John focuses on commercial litigation related to renewable energy, regulatory and administrative law, cannabis, and civil litigation. Previously he was an associate attorney for a prominent civil defense firm in Albuquerque. John speaks and writes in Spanish.

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## Meetings

### September

**28**  
**Intellectual Property Law Section**  
 noon, JAlbright Law LLC

**29**  
**Trial Practice Section**  
 noon, virtual

### October

**4**  
**Health Law Section**  
 9 a.m., virtual

**5**  
**Employment and Labor Law Section**  
 noon, virtual

**13**  
**Children's Law Section**  
 noon, virtual

**13**  
**ADR Steering Committee Section**  
 noon, virtual

**14**  
**Prosecutors Section**  
 noon, virtual

**18**  
**Solo and Small Firm Section**  
 noon, virtual/State Bar Center

**21**  
**Family Law Section**  
 noon, virtual

## Workshops and Legal Clinics

### September

**28**  
**Consumer Debt/Bankruptcy Workshop**  
 6-8 p.m., virtual

### October

**26**  
**Consumer Debt/Bankruptcy Workshop**  
 6-8 p.m., virtual

### November

**2**  
**Divorce Options Workshop**  
 6-8 p.m., virtual

### December

**7**  
**Divorce Options Workshop**  
 6-8 p.m., virtual

**14**  
**Consumer Debt/Bankruptcy Workshop**  
 6-8 p.m., virtual

# Notices

## COURT NEWS

### New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do>.

### Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. Library Hours: Monday-Friday 8 a.m.-noon and 1-5 p.m. For more information call: 505-827-4850, email: [libref@nmcourts.gov](mailto:libref@nmcourts.gov) or visit <https://lawlibrary.nmcourts.gov>.

### Bernalillo County Metropolitan Court Announcement of Vacancy

A vacancy on the Bernalillo County Metropolitan Court (Criminal) will exist as of Oct. 1, due to the retirement of the Hon. Judge Sandra Engle, effective Sept. 30. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. Applicants can access application forms at <https://lawschool.unm.edu/judsel/application.html> or have forms emailed to them by contacting the Judicial Selection Office at [akin@law.unm.edu](mailto:akin@law.unm.edu). The deadline for applications has been set for Sept. 22 at 5 p.m. Applications received after that time will not be considered. The Bernalillo County Metropolitan Court Judicial Nominating Commission will meet at 9:30 a.m. on Oct. 11 to interview applicants at the State Bar of New Mexico, located at 5121 Masthead Street N.E., Albuquerque, New Mexico, in their conference rooms, with no mask or social distancing requirement. The Committee meeting is open to the public and those who wish to be heard about any of the candidates will have an opportunity to be heard.

## Professionalism Tip

**With respect to the courts and other tribunals:**

I will communicate with opposing counsel in an effort to avoid litigation or to resolve litigation.

### New Assignment for Judge Nina Safier

Upon the retirement of Metropolitan Court Judge Sandra Engel, effective Oct. 1, Judge Nina Safier, Division XVII, will be assigned the misdemeanor criminal docket previously assigned to Judge Engel, Division XI.

### New Assignment for Judge Claire A. McDaniel

With Gov. Lujan Grisham's appointment of Claire A. McDaniel to Division XVI of the Metropolitan Court, effective Sept. 6, Judge McDaniel will be assigned to the Felony Division.

### Second Judicial District Court Appointment to Second Judicial District Court Bench

Gov. Michelle Lujan Grisham has announced the appointment of David A. Murphy to the Second Judicial District Court bench. Effective July 23, Judge Murphy has been assigned to fill Division XXX, the new judgeship created when Gov. Lujan Grisham recently signed into law House Bill 68. Judge Murphy will be assigned Criminal Court cases previously assigned to Judge Alisa Hart, Division XXI. Pursuant to New Mexico Supreme Court Order 22-8500-007, peremptory excusals have been temporarily suspended during the COVID-19 Public Health Emergency.

### Thirteenth Judicial District Court Appointment to the Thirteenth Judicial District Court Bench

On July 7, Gov. Michelle Lujan Grisham has appointed Karl W. Reifsteck to the Thirteenth Judicial District Bench. Judge Karl W. Reifsteck was appointed to fill the newly created Division IX judgeship created when Gov. Lujan Grisham recently signed into law House Bill 68. Judge Reifsteck will be assigned Civil, Probate and Mental Health Cases.

### Mass Reassignment of Cases

On July 7, Gov. Michelle Lujan Grisham appointed Karl W. Reifsteck to Division IX of the Thirteenth Judicial District Court. Effective Aug. 15, all pending cases civil cases

not on scheduling orders assigned to Judge Christopher Perez and Chief Judge George P. Eichwald have been reassigned to the Honorable Karl W. Reifsteck. In addition, effective Aug. 15, all pending PQ cases assigned to Judge Cheryl H. Johnston were reassigned to the Honorable Karl W. Reifsteck. Pursuant to 1.088.1(C), parties who have not yet exercised a peremptory excusal will have 10 days from Oct. 12 to file their peremptory excusals of those newly assigned Judges.

## STATE BAR NEWS Equity in Justice Program Have Questions?

Do you have specific questions about equity and inclusion in your workplace or in general? Send in anonymous questions to our Equity in Justice Program Manager, Dr. Amanda Parker. Each month, Dr. Parker will choose one or two questions to answer for the *Bar Bulletin*. Visit [www.sbnm.org/eij](http://www.sbnm.org/eij), click on the Ask Amanda link and submit your question. No question is too big or too small.

## Board of Bar Commissioners 2022 Election Notice

The nomination period for nine Board of Bar Commissioner seats will close at 3 p.m. on Oct. 11. Vacancies exist in the Second, Third and Sixth, Fifth, Seventh and Thirteenth and Eleventh Judicial Districts. Nominations of active status members to fill the vacancies caused by the expiration of the term of such members shall be made by petition of 10 or more active status members of the Bar who are in good standing and whose principal place of practice (address of record) is in the respective district. Active status members whose principal place of practice (address of record) is in El Paso County, Texas, may nominate members for the Third and Sixth Judicial Districts. Emails in lieu of signatures will be accepted. View the vacant positions, terms, duties and requirements for BBC members and the nomination petition in the Sept. 14 Bar Bulletin or on the website under notices. For more information, email [bbc@sbnm.org](mailto:bbc@sbnm.org).



## Legal Resources for the Elderly Program

### LREP Holding In-Person Workshop

LREP will be holding one in-person workshop on Oct. 6 at the Fort Sumner Public Library at 235 W. Sumner Ave., Fort Sumner, NM 88119. The presentation will last from 10 a.m. - 11:15 a.m. while the post-presentation clinic will last from 11:15 a.m. - 12:15 p.m. The workshop will cover Powers of Attorney, Advance Health Care Directives, Probate, Non-Probate Transfers (Including Transfer on Death Deeds) and Institutional Medicaid. An attorney will also be on-site to prepare and execute POA and AHCD documents after the presentation. You can pre-register as required by calling 505-797-6005.

## New Mexico Lawyer Assistance Program

### NMJLAP Transitions to NM LAP

NM LAP has changed its name (formerly Judges and Lawyers Assistance Program, JLAP) to distinguish itself from the new Judicial Wellness Program. The NM LAP will continue its focus on confidential, professional and peer assistance to help individuals identify and address problems with alcohol and other drugs, depression and other mental health/emotional disorders. NM LAP endeavors to improve the well-being of lawyers, law students, paralegals, law clerks and all other legal staff through support, education and early intervention with the goal of ensuring every legal professional is healthy and fit to practice. You can find more information about NM LAP at [www.sbnm.org/NMLAP](http://www.sbnm.org/NMLAP). The New Mexico Judicial Wellness Program (NMJWP) promotes and optimizes health and wellness among New Mexico Judges by creating and facilitating educational programs and offering resources and services that provide a supportive environment for our judiciary to restore and maintain ones overall mental, physical and spiritual health. You can find more information about NMJWP at [www.sbnm.org/nmjwp](http://www.sbnm.org/nmjwp).

## The Suicide and Crisis Lifeline

Started July 16, the 988 Suicide and Crisis Lifeline is now available nationwide. The Lifeline provides 24/7 all year round, free and confidential support for people in distress, prevention and crisis resources for you or your loved ones and best practices for professionals. For more information, visit [www.988nm.org](http://www.988nm.org).

## NM LAP Committee Meetings

The NM LAP Committee will meet at 4 p.m. on Oct. 16 and Jan. 12, 2023. The NM LAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NM LAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Lawyer Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

## Free Well-Being Webinars

The State Bar of New Mexico contracts with The Solutions Group to provide a free employee assistance program to members, their staff and their families. Contact the Solutions Group for resources, education and free counseling. Each month in 2022, The Solutions Group will unveil a new webinar on a different topic. Sign up for "Echopsychology: How Nature Heals" to learn about a growing body of research that points to the beneficial effects that exposure to the natural world has on health. The next webinar, "Pain and Our Brain" addresses why the brain links pain with emotions. Find out the answers to this and other questions related to the connection between pain and our brains. The final webinar, "Understanding Anxiety and Depression" explores the differentiation between clinical and "normal" depression, while discussing anxiety and the aftereffects of COVID-19 related to depression and anxiety. View all webinars at [www.solutionsbiz.com](http://www.solutionsbiz.com) or call 505-254-3555.

## Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam Moore at [pmoore@sbnm.org](mailto:pmoore@sbnm.org) or Briggs Cheney at [bcheney@dsc-law.com](mailto:bcheney@dsc-law.com) for the Zoom link.

## The New Mexico Well-Being Committee

The N.M. Well-Being Committee was

— *Featured* —

## Member Benefit



Defined Fitness offers State Bar members, their employees and immediate family members a discounted rate. Memberships include all club locations and group fitness classes. Discounts included on Initial Fee, No Annual Fee, No Cancellation Fee, No Reactivation Fee. Other memberships do require an annual fee and may require a reactivation and cancellation fee. Locations offer aquatics complex, state-of-the-art equipment and personal training services. Bring proof of State Bar Membership to any Defined Fitness location to sign up. For more information, contact the corporate relations manager at 505.349.4444. [www.defined.com](http://www.defined.com).

established in 2020 by the State Bar of New Mexico's Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee's goal to examine and create initiatives centered on wellness.

## Young Lawyers Division Help New Mexico Wildfire Victims

In partnership with the Federal Emergency Management Agency and the American Bar Association's Disaster Legal Services Program, the State Bar of New Mexico Young Lawyers Division is providing legal resources and assistance for survivors of the New Mexico wildfires. The free legal aid hotline opened on June 6 and we need more volunteers. Fire survivors can call the hotline toll free at 888-985-5141 Monday through

Friday, 9 a.m. to 1 p.m. MST. Individuals who qualify for assistance will be matched with New Mexico Lawyers to provide free, limited legal help in areas like securing FEMA benefits, assistance with insurance claims, help with home repair contracts, replacement of legal documents, landlord/tenant issues and mortgage/foreclosure issues. Volunteers do not need extensive experience in any of the areas listed below. FEMA will provide basic training for frequently asked questions. This training will be required for all volunteers. We hope volunteers will be able to commit approximately one hour per week. Visit [www.sbnm.org/wildfirehelp](http://www.sbnm.org/wildfirehelp) for more information and to sign up. You can also contact Lauren E. Riley, ABA YLD District 23, at 505-246-0500 or [lauren@batleyfamilylaw.com](mailto:lauren@batleyfamilylaw.com).

## UNM SCHOOL OF LAW Law Library Hours

The UNM Law Library facility is currently closed to guests. Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at [lawlibrary@unm.edu](mailto:lawlibrary@unm.edu) or phone at 505-277-0935.

## OTHER BARS The Center for Civic Values Judges Needed for Middle School Mock Trial Program at Bernalillo County Metropolitan Court

The upcoming New Mexico Middle School Mock Trial Program is an innovative, hands-on experience in the law for seventh and eighth grade middle school students, and it needs judges. This inaugural year, 20 teams from New Mexico will head to Albuquerque to try a case and learn about the judicial system. The trials will be held Nov. 11-12 at the Bernalillo County Metropolitan Court in Albuquerque. Those interested in attending may sign up at <https://civicvalues.org/mock-trial/registration/middle-school-judge-volunteer-registration/> by Nov. 1. If you have any questions, please contact Kristen Leeds at the Center for Civic Values at 505-764-9417 or [Kristen@civicvalues.org](mailto:Kristen@civicvalues.org).

## Judges Needed for Gene Franchini New Mexico High School Mock Trial Competition

The Gene Franchini New Mexico High School Mock Trial Competition, open to any

and all high school students, needs judges for its next event. The qualifier competitions will be held Feb. 17-18, 2023 at the Bernalillo County Metropolitan Court in Albuquerque and the Third Judicial District Court in Las Cruces. Those interested in attending the event may sign up at <https://civicvalues.org/mock-trial/registration/judge-volunteer-registration/> by Feb. 4, 2023. Please email any questions to Kristen Leeds at [Kristen@civicvalues.org](mailto:Kristen@civicvalues.org) or by phone at 505-764-9417.

## New Mexico Workers' Compensation Administration Notice of Public Hearing

The New Mexico Workers' Compensation Administration will conduct an in-person public hearing on the adoption of new WCA Rules on Oct. 21 at 1:30 p.m. at the Workers' Compensation Administration at 2410 Centre Ave. S.E., Albuquerque, NM, 87106. The proposed rule amendments are available at <https://www.workerscomp.nm.gov/>. Written comments on the changes can be sent to [gc.clerk@state.nm.us](mailto:gc.clerk@state.nm.us) and will be accepted until 5 p.m. on Oct. 28. The WCA proposes to repeal and replace Parts 4 and 7 and other changes to Parts 1, 5, 6, 12 and 13.

## Mandatory Succession Planning Rule - effective October 1, 2022

- On the 2023 Annual Registration Statement, New Mexico Attorneys will be required to certify their compliance with Rule 16-119 NMRA.
- Rule 16-119 requires every attorney practicing law in New Mexico to have a written succession plan.
- Find out more regarding the Rule and its requirements by:
  - Listening to a succession planning podcast on *SBNM is Hear*
  - Attending a CLE webinar on Succession Planning on October 12, 2022

Contact the State Bar Professional Development Program at 505-797-6079 or the State Bar Regulatory Programs at 505-797-6059. Visit [www.sbnm.org/successionplanning](http://www.sbnm.org/successionplanning) for sample plans and resources.



State Bar of  
New Mexico  
Est. 1886

# Legal Education

## September

- |  |  |  |
|--|--|--|
| <p>28 <b>Selling to Consumers: Sales, Finance, Warranty, &amp; Collection Law, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>29 <b>2022 Family Law Fall Institute - Day 1</b><br/>1.25 G, 4.25 EP<br/>In-Person and Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>30 <b>2022 Family Law Fall Institute - Day 2</b><br/>6.0 G<br/>In-Person and Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
|--|--|--|

## October

- |   |  |   |
|---|--|---|
| <p>5 <b>Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                 | <p>11 <b>Trauma-Informed Lawyering in Domestic Abuse Cases</b><br/>1.0 EP<br/>Web Cast<br/>New Mexico Legal Aid<br/>www.newmexicolegalaid.org</p>  | <p>21-23 <b>Taking and Defending Depositions</b><br/>28-30 20.0 G, 2.0 EP<br/>In-Person<br/>UNM School of Law<br/>lawschool.unm.edu</p>   |
| <p>5 <b>We've Got Skin in the Game: Addressing the Impact of Racial Microaggressions on Mental Health</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>12 <b>Mandatory Succession Planning: It Has To Happen, But It Doesn't Have To Be That Difficult</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> | <p>24 <b>Social Media as Investigative Research and Evidence</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  |
| <p>6 <b>Communication Breakdown: It's Always The Same (But It's Avoidable)</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                            | <p>13 <b>How to be a NATZ Ninja: An Overview of Naturalization and Citizenship</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                      | <p>25 <b>Divorce and Custody in DV-Related DMs</b><br/>1.0 G<br/>Web Cast<br/>New Mexico Legal Aid<br/>www.newmexicolegalaid.org</p>  |
| <p>6 <b>Trust and Estate Planning for Family Businesses, Part 1</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                    | <p>14 <b>2022 Elder Law Institute: The Court Keeps the Score: Assess, File, Success!</b><br/>3.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                | <p>25 <b>Identifying and Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV</b><br/>1.0 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p> |
| <p>6 <b>Trust and Estate Planning for Family Businesses, Part 2</b><br/>1.0 G<br/>Teleseminar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                    | <p>19 <b>Essential Law Firm Technology: The Best Of What's Out There</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                | <p>26 <b>Ethics of Social Media Research</b><br/>1.5 EP<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  |
| <p>7 <b>2022 Health Law Symposium</b><br/>3.5 G, 2.0 EP<br/>In-Person and Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>  | <p>20 <b>2022 Solo &amp; Small Firm institute</b><br/>2.0 G, 4.0 EP<br/>In-Person and Webcast<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>                                 | <p>27 <b>Law Practice Management For New Lawyers</b><br/>1.0 G<br/>Webinar<br/>Center for Legal Education of NMSBF<br/>www.sbnm.org</p>   |

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to [notices@sbnm.org](mailto:notices@sbnm.org). Include course title, credits, location/course type, course provider and registration instructions.

## November

- |   |   |    |  |    |  |
|---|---|----|--|----|--|
| 2 | <b>2022 Business Law Institute</b><br>5.0 G, 1.0 EP<br>In-Person or Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org                  | 9  | <b>Learn by Doing: An Afternoon of Legal Writing Exercises</b><br>3.0 G<br>In-Person or Webinar<br>Center for Legal Education of NMSBF<br>www.sbnm.org | 18 | <b>2022 Animal Law Institute: Animals, Agriculture, and the Planet</b><br>3.0 G, 1.0 EP<br>In-Person or Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org |
| 8 | <b>Child Sexual Assault</b><br>1.0 G<br>Web Cast<br>New Mexico Legal Aid<br>www.newmexicolegalaid.org   | 10 | <b>The Paperless Law Firm: A Digital Dream</b><br>1.0 EP<br>Webinar<br>Center for Legal Education of NMSBF<br>www.sbnm.org                             | 21 | <b>Adobe Acrobat DC: The Basics for Lawyers and Legal Professionals</b><br>1.0 G<br>Webinar<br>Center for Legal Education of NMSBF<br>www.sbnm.org                     |
| 9 | <b>Wait, My Parents Were Wrong? It's Not All About Me?</b><br>3.0 EP<br>In-Person or Webcast<br>Center for Legal Education of NMSBF<br>www.sbnm.org | 17 | <b>Diversity, Equity &amp; Inclusion in Law Practice</b><br>1.0 EP<br>Teleseminar<br>Center for Legal Education of NMSBF<br>www.sbnm.org               | 23 | <b>Ethics of Identifying Your Client: It's Not Always Easy</b><br>1.0 EP<br>Teleseminar<br>Center for Legal Education of NMSBF<br>www.sbnm.org                         |

## December

- 5     **Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204**  
1.0 EP  
Webinar  
Center for Legal Education of NMSBF  
www.sbnm.org



# A Message from Chief Justice C. Shannon Bacon



Dear Colleagues:

The Supreme Court of New Mexico is currently seeking applications to fill vacancies on committees, boards, and commissions. Our committees, boards, and commissions are integral to ensuring equity and justice for those who participate in our judicial system—members of the public and the broader

legal community—by assisting the Court with the regulation of the practice and procedures within our courts. These panels have a wide range of responsibilities and functions. They regulate the practice of law, expand resources for civil legal assistance to New Mexicans living in poverty, oversee continuing legal education for lawyers, foster improved communication between tribal, federal, and state courts to improve legal services to tribal communities, administer funds to assist individuals unable to pay for legal services, and advise on long-range planning, just to name a few. Anyone who has ever served on one of the Court's committees, boards, or commissions can attest to how challenging and rewarding this work can be.

In filling these vacancies, the Court strives to appoint non-attorneys, attorneys and judges who are able to regularly attend

committee meetings and who are committed to generously volunteering their time, talent, and energy to this important work. The Court also endeavors to bring diversity, geographical and practice area balance to these committees, boards, and commissions by soliciting volunteers from throughout the state and from the various practice segments of our bar. To achieve these goals, we need volunteers representing the broad spectrum of our bench and bar who come from all corners of this great state, and are requesting that applicants voluntarily disclose demographic information to ensure the committees, boards and commissions reflect our diverse community.

If you would like to be considered to serve on a committee, board, or commission, please send your application and resume by **October 14, 2022**, to Elizabeth A. Garcia, Chief Clerk of Court at [supeag@nmcourts.gov](mailto:supeag@nmcourts.gov). The application and a complete list of vacancies on committees, boards, and commissions can be found on the Supreme Court's website at <https://supremecourt.nmcourts.gov/current-vacancies.aspx>.

On behalf of the Supreme Court, I extend our sincere appreciation to all of you who volunteer and serve in this important function within our legal system.



## New Mexico Supreme Court Committees, Boards, and Commissions NOTICE OF 2022 YEAR-END VACANCIES

The Supreme Court of New Mexico is seeking applications to fill upcoming year-end vacancies on many of its committees, boards, and commissions. Applicants will be notified of the Court's decisions at the end of the year. Unless otherwise noted below, any person may apply to serve on any of the following committees, boards, and commissions:

- Appellate Rules Committee** (1 general member position)
- Board Governing the Recording of Judicial Proceedings** (1 reporter member position)
- Children's Court Rules Committee** (3 general member positions)
- Client Protection Fund Commission** (1 general member position)
- Code of Judicial Conduct Committee** (1 district judge position)
- Code of Professional Conduct Committee** (3 general member positions)
- Disciplinary Board** (1 attorney position)
- Domestic Relations Rules Committee** (1 general member position)
- Judicial Standards Commission** (1 municipal judge position, 1 magistrate judge position)
- Judicial Technology Council** (1 magistrate judge position)
- NM Children's Court Improvement Commission** (1 position for a public defender in Children's Court, 1 position for a district attorney in Children's Court, 1 position for an attorney representing youth, 1 position for a guardian ad litem)

- NM Commission on Access to Justice** (2 general member positions)
- NM Supreme Court Commission on Equity and Justice** (1 position for a judge from medium-sized district or metropolitan court)
- Rules of Civil Procedure for State Courts Committee** (1 general member position)
- Rules of Criminal Procedure for State Courts Committee** (2 general member positions)
- Rules of Evidence Committee** (1 general member position)
- Statewide Alternative Dispute Resolution Commission** (1 general member position, 2 district judge positions, 1 magistrate judge position, 1 metropolitan court ADR representative position, 1 position for a member of the business community)
- Tribal-State Judicial Consortium** (1 state judge position)
- Uniform Jury Instructions-Civil Committee** (2 general member positions)
- Uniform Jury Instructions-Criminal Committee** (2 general member positions)

Anyone interested in volunteering to serve on one or more of the foregoing committees, boards, or commissions may apply by submitting an application, along with a resume, to Elizabeth A. Garcia, Chief Clerk, by email to [nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov), or by first class mail to P.O. Box 848, Santa Fe, NM 87504. The application can be found on the Supreme Court's website ([supremecourt.nmcourts.gov](http://supremecourt.nmcourts.gov)) – Committees, Board and Commissions – Current Vacancies.

**The deadline for applications is Friday, October 14, 2022.**



# Recognizing Excellence

## State Bar of New Mexico Presents Annual Awards

The State Bar of New Mexico presents the Annual Awards to those who have distinguished themselves or made exemplary contributions to the State Bar or legal profession over the last year. The following were recognized for excellence and service on August 11 during the 2022 Annual Meeting.

Distinguished Bar Service  
Award: *Non-Lawyer*



**JUAN ABEYTA**

Excellence in  
Well-Being Award



**PAMELA MOORE**

Judge Sarah M. Singleton  
Distinguished Service Award



**MICHAEL P. FRICKE**

Justice Pamela B. Minzner Professionalism Award



**JUDGE:  
JAMES J. WECHSLER**



**ATTORNEY:  
QUENTIN P. RAY**

Outstanding Legal Organization or Program Award



**ORGANIZATION: POJOAQUE  
PUEBLO TRIBAL COURT**

*Accepted by Arthur Malone*



**PROGRAM: INTELLECTUAL  
PROPERTY PRO BONO FAIR**

*Ian Bezpalko (left), Svitlana Anderson, Jose Garcia, Jeff Albright and Justin Muehlmeier*

Outstanding Young  
Lawyer of the  
Year Award



**LAUREN E. RILEY**

Robert H. LaFollette  
Pro Bono Award



**DARLENE T. GOMEZ**

*Pictured second from left*

Seth D. Montgomery  
Distinguished Judicial  
Service Award



**JUDGE HENRY A. ALANIZ**

## *Past Presidents*

We were lucky to have 13 past presidents of the State Bar attend the Annual Meeting.



From left to right: Wesley Pool, Scotty Holloman, Hon. Henry Alaniz (ret.), Andrew Cloutier, David Hernandez, Jerry Dixon, Erika Anderson, Dan O'Brien, Dennis Jontz, Hon. Alan Torgerson (ret.), Jessica Perez, Carla Martinez, Charles Vigil, and President Carolyn Wolf.



## *President's Award*

Each year, the president chooses an individual or individuals to honor for their service to the State Bar. President Carolyn Wolf chose to recognize Paula Tackett and Brenda Castello for their contributions and work with the NM Compilation Commission.





## ASK AMANDA

### **Dear Amanda,**

*Why are there so very few Native American state court judges who are from a New Mexico tribe, nation, or pueblo or have a Federal Indian law background. What, if anything, is the New Mexico Supreme Court doing to change this to allow for more Native American inclusion on the state judiciary because a significant portion of the state's population identifies as Native American and large swaths of Indian Country are contained within the state of New Mexico?*

### **Dear Member,**

The historical and current exclusion of Native Americans from positions of power in our state and nation is something that must be addressed. It is difficult to see our society as equal when there is not equitable representation in the judiciary. Judges make decisions on cases, laws, and interpret the constitution. When judges do not reflect the population they are presiding over, it can be perceived as unfair, and viewing the judiciary as unfair chips away at the public's faith that justice will be served for everyone.

Currently, 24 states do not have any people of color on their supreme court and that includes eight states where people of color are at least a quarter the state's population<sup>1</sup>. At a national level, 73% of the federal judges are men and 80% are white<sup>2</sup>. In New Mexico, where 10% of the population identifies as Native American, only 4% of our judges identify as such, and that has remained steady since 2009, indicating little progress from 2009-2019<sup>3</sup>.

There are also fewer Native American law students. Our data from 2009 showed Native American students at 13%, but our most recent data from 2019 shows that it has dropped to 7%. There are programs to support Native American law students, and mentorship has shown to have a positive impact on bar exam passage rates, but a more concerted effort needs to be made to recruit and support Native Americans at the law school, in the profession and state and federal courts.

### **Steps are being taken**

There are several efforts under way to build a pipeline to the judiciary, however, they do not specifically target Native Americans. I reached out to Chief Justice Shannon Bacon to see what she could tell us about Supreme Court efforts. She said, "the Supreme Court has established both the Judicial

Clerkship Program and the Equity and Justice Commission to address the need for a more diverse bar and judiciary. A judiciary that reflects the population it serves is critical to the public's trust and confidence in our branch of government."

The Judicial Clerkship Program she mentioned is an initiative that began in 2021 that recruits law students from historically underrepresented and excluded groups for judicial clerkships. Since the beginning of the program, 18%-33% of the students who have been placed identify as indigenous or Native American. By the time this article is published, another cohort will be placed for the summer of 2023.

Chief Justice Bacon and Justice Vargas are also leading efforts with "So, You Want to be a Judge?," a new statewide program that encourages lawyers from diverse backgrounds to consider the bench and has programming that will prepare lawyers for interviews and what is involved in becoming a judge.

We also need to examine the process of becoming a judge to see where it may be privileging some people over others. In order to recruit judges from diverse backgrounds, there needs to be formalized mechanisms. We cannot just rely on voluntary efforts when it comes to any equity issue, and this is one where we need new policies and practices. Conversations about recruitment and barriers to the judiciary are taking place, and as the Equity in Justice Program Director at the State Bar, I encourage you to reach out to me to keep this conversation going. ■

**Dr. Amanda Parker** is the Equity in Justice Director at the State Bar of New Mexico. To submit a question to Ask Amanda or find out more about the program go to [www.sbnm.org/eij](http://www.sbnm.org/eij).

### Endnotes

<sup>1</sup> Research Report, Brennan Center for Justice, State Supreme Court Diversity, July 23, 2019 <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity>

<sup>2</sup> Research Report, Brennan Center for Justice, State Supreme Court Diversity, July 23, 2019 <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity>

<sup>3</sup> The New Mexico State Bar Association 2019 Gender Diversity Report (American Decisions, 2020).

Ask your questions about diversity, equity, and inclusion issues in the office, courtroom, and larger society at [www.sbnm.org/eij](http://www.sbnm.org/eij)

# Well-Being in the Bigger Firm

## *“Leash the Dog, Secure the Scene”*

By Briggs Cheney

**B**efore joining the State Bar JLAP program as its Clinical Coordinator, Tenessa Eakins was an EMT in San Diego. Tenessa is subtly stoic, wickedly bright and has a sense of humor that can cut you to the quick. She frequently reminds us at JLAP and the Well-Being Committee of the EMT mantra, “Leash the dog, secure the scene.” Where does that fit into well-being and big firms? Good question. First, if you got this far, it got your attention. Bear with me.

As Tenessa explains, when an EMT arrives on a scene, before doing anything else, they are trained to make sure the dog is leashed or there is no active shooter. This is EMT training jargon, but you get the drift – before the EMT can render aid, they first must make sure they are safe. “Okay, but well-being in big firms – I don’t get it?” you ask.

Fair question. This out-of-left-field EMT training cliché provides me a way to test a hypothesis – a personal hypothesis that may not be correct and a hypothesis that will provide our podcasters (members from two of our state’s oldest big firms) something to chew on and probably spit out.

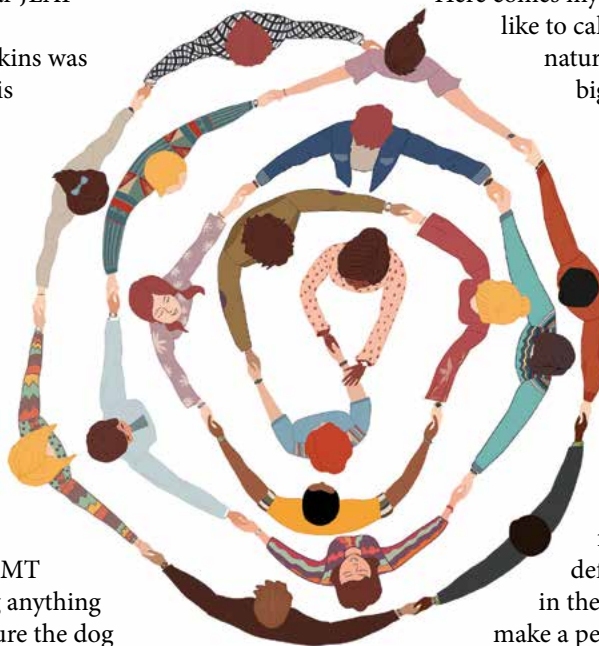
After almost three years of working on the Well-Being Committee, considering how different legal communities address – or don’t address – well-being, conventional wisdom (or just an assumption) was that Big Firms already had this figured out and they must do it better. After all, “bigger is always better,” right? Of course not, but it does make some sense that a larger firm would have the resources to focus on promoting their lawyers’ well-being. And my conversations with lawyers in two of our state’s larger firms confirm that is the case. If you look outside of New Mexico to the Denver’s, Phoenix’s, Dallas’s, Houston’s and keep going east, what the really big firms are doing is pretty impressive. <https://www.americanbar.org/groups/journal/articles/2022/law-firms-are-using-wellness-programs-to-recruit-new-lawYERS/>

Here comes my hypothesis: Well-being – what I like to call “being selfish” – does not come naturally or easily, and although the bigger firms have the resources to offer more opportunities for lawyer well-being, it’s an inside job and requires being intentional. We are in the wild west, so let me put it in cowboy terms: “You can lead the horse to water, but you can’t make it drink.”

Let me be even more direct: I do not think it matters whether the lawyer works for a big firm or is a solo or small firm practitioner or a public defender or prosecutor or works in the public sector, the lawyer must make a personal decision that well-being is important to them. They need to learn what Tenessa learned as an EMT – to make sure the dog is leashed or the scene is secure – to worry about themselves first.

In talking with some bigger-firm lawyers—a statement that sounds pretty lousy—I know well, I heard some interesting terms: business model, culture, entrepreneurial and middle-roaders. Bill Slease combined those terms nicely when he suggested well-being in the bigger firms “is a personal journey versus professional obligations versus professional success.” This refers to the tension that arises between the lawyer’s personal life, the lawyer’s professional obligations to clients and the lawyer’s success in the firm (partner/shareholdership, compensation formulas, anticipated/expected billable hours, etc.).

This last year, we have focused on legal communities and now we are looking at the big or bigger firms. The times are changing, of course, in New Mexico and big/bigger firms from other states are now opening offices here, but in terms of pure-bred New Mexico big firms, “big” has been around 60 lawyers. But 60 is a big legal community, and what I learned from my big-firm friends—which sounds better—is that each lawyer is different, and it was emphasized that diversity is important today. Well-being programs are not one-size-fits-all.





I want to jump back to those “interesting terms” I mentioned above: business model, culture, entrepreneurial and middle-roaders. Yes, lawyers in bigger firms are different and diversity is so important, but my big firm friends also emphasize that big firms’ economic survival depend on having a mix of lawyers – lawyers who are entrepreneurial and love the hard-charging, lawyers who are interested in the business model and perpetuating the firm tradition and the middle-roaders who maintain the fiber and culture of the firm. I am sure I am not capturing exactly what my big firm friends were trying to communicate, and I am not sure they knew exactly what they were trying to say. It is hard to make perfect sense of the law business – it’s magic. There are probably those who say the law business doesn’t make any sense, and they don’t try. I think Bill Slease got darn close when he observed that well-being in the bigger firms is a “personal journey versus professional obligations versus professional success.” For the big firm, there must be a tension that keeps it all going – the magic.

Enough big-firm mystical talk. The big firms do make a lot available for their lawyers and staff. EAP is available to those enrolled in the firm’s health plan, mental health services are available to include interactive, online software addressing mental health issues, firm committees planning and offering a whole host of wellness and social activities (I heard tales of corn hole and dessert competitions), gym memberships and the traditional office picnics and holiday events. But in addition to those more traditional benefits, these firms have sabbatical programs, flexible working hours, contracts for less than full-time work and, as you will learn from the referenced ABA Journal article, some firms provide professional coaching, lawyer-led mindful meditation sessions and the list goes on. There is a potpourri of well-being resources available which provides me a segue back to my hypothesis.

I still believe my proposed theory to be generally correct. Well-being, for any legal professional, not just lawyers, is an inside job; a personal and intentional decision to be a little selfish about yourself. Pam Moore often speaks of it being the State Bar and JLAP’s, mission to change the well-being culture in the legal community. It has taken this lawyer over two years to realize that Pam was spot-on. I had to decide to be intentional in taking care of myself – I had to decide to change my own person culture. That is an end-run back to my hypothesis that if lawyers begin to believe it is critical that they take care of themselves first (leash the dog, secure the scene), Pam’s dream of changing the well-being culture will slowly come to be.

One final thought about the big firms: They offer much to their lawyers – a potpourri of well-being – but they have one magic resource unique to being “big,” and that magic resource has two agendas. First, the big firms have an interest in their lawyers thriving – they want the lawyers to stay and grow with the firm – so they can stay big. But most important, and I heard this adamantly repeated from each of my big firm friends, they feel like a big family and each member of their family is important and they look after each other. ■

**Briggs Cheney, Esq.,** *Dixon•Scholl•Carrillo•P.A., and the Co-Chair to the NMJLAP Committee.*



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#### Endnotes

<> “Magic” is this lawyer’s go-to-default when he can’t explain something in words – the blank tile in Scrabble® or the wild card in poker. Perhaps here, magic, is an undefinable mix that is part of a big firm for it to succeed.

<> The referenced ABA Journal article suggests that on the checklist of today’s prospective hires is “does this law firm care about lawyer well-being and what do they offer?”



**Bob Matteuci, Jr.** has been selected to serve on the New Mexico Bar Association Family Law Section Board of Directors. He will be partnering with the Board to continually monitor and share the changing nature of our laws so that New Mexicans may be well-served by our legal community.



**Todd W. Rallison** will join Gallagher & Kennedy's environmental department after time spent in-house at Intel. First joining G&K in 1990, he served as global legal director for Corporate Services at Intel Corporation where he managed many types of legal services. From this experience, he will bring knowledge of the technology industry and its environmental health and safety needs,



**Nathan Jurgensen** recently joined Holland & Hart in Santa Fe as an associate. Nathan guides companies in developing strategies for resolving disputes and protecting business interests through litigation. He provides critical support to all phases of corporate transactions and litigation.



**Paula Vance** recently joined Holland & Hart in Santa Fe as an associate. Paula counsels oil and gas clients on routine and complex regulatory and administrative matter. Paula leverages her unique experience in the oil and gas industry as a private sector consultant for offshore oil and gas over a decade of experience focused on regulatory compliance, operations, and safety as a prior active-duty Officer in the US Coast Guard to provide counsel tailored to her clients' unique needs.

Gallagher & Kennedy is pleased to announce that 41 of its attorneys across 42 practice areas have been selected for the 2023 edition of *The Best Lawyers In America*®, with five attorneys named *Ones To Watch*®. In addition, **Dalva L. Moellenberg** has been named "Lawyer of the Year" for Environmental Law in Santa Fe. *Best Lawyers* awards this recognition to individual lawyers who received the highest overall peer feedback for a specific practice area and geographic region. Only one lawyer is recognized for each specialty and location.

**Jones, Skelton & Hochuli, PLC**, the largest and most experienced law firm of trial and appellate lawyers in Arizona practicing in areas of insurance and insurance coverage defense, is pleased to announce that 67 firm lawyers have been recognized in the 2023 edition of *Best Lawyers in America*. 47 have been named to the *Best Lawyers* list and 20 to the *Best Lawyers: Ones to Watch* list, which are recognitions awarded to up-and-coming attorneys typically in practice for 5-10 years.

Gallagher & Kennedy is pleased to welcome back **Randy E. Brogdon** to its environmental department. Having worked at Troutman Pepper for 21 years, Randy's practice includes representation of electric utilities, manufacturing facilities, mining operations, and other industry sectors. Working with national companies, Randy advises on air and water quality permitting and compliance, environmental mergers and acquisitions and resolving compliance issues with states, environmental groups, EPA Regions and the Department of Justice.



**George "Dave" Giddens** has been selected for inclusion in the 29th edition of *The Best Lawyers in America*®. Giddens' practice areas include Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Commercial Litigation, Litigation - Bankruptcy and Real Estate Law. As founder and managing shareholder of Giddens + Gatton Law, P.C., he focuses primarily in Albuquerque, Carlsbad, Clovis, Rio Rancho, Roswell and Santa Fe.

In its 2023 edition, *Best Lawyers* selected 16 Sutin lawyers in Albuquerque and Santa Fe. These include **Anne P. Brown, Suzanne Wood Bruckner, Eduardo A. Duffy, Tina Muscarella Gooch, Robert G. Heyman, David H. Johnson, Deborah E. Mann, Maria Montoya Chavez, Lynn E. Mostoller, Charles J. Piechota, Jay D. Rosenblum, Andrew J. Simmons, Barbara G. Stephenson and Benjamin E. Thomas**. There were two attorneys included in *Ones to Watch*, including **Jesse D. Hale and Roert J. Johnston**.

# In Memoriam

www.sbnm.org

**Roger A. Wagman**, age 73, a longtime resident of Albuquerque died June 14, 2022. He is survived by his beloved spouse Christina "Chris" Paap, dear sister Cynthia (Frank) Sommer of Purcellville, VA, niece Jacqueline (Tony) Dobranski and grandnephews Rowan and Nolan of Washington, D.C, cousins, extended family and friends. Roger was preceded in death by his parents Florence (Glazer) and Jacob I. Wagman of Bristol, Penn. Roger was an attorney in Albuquerque, formerly State of NM Assistant Attorney General in Santa Fe, Municipal Judge in Corrales, State of NM Public Defender and in private practice with clients from all over N.M. He was a proud alum of Tulane University undergraduate and law school and Bryn Mawr College (Mass.). At Tulane, Roger was a member of the Tau Epsilon Phi fraternity. Graveside service will be officiated by Rabbi Arthur Flicker of Congregation B'nai Israel on Monday June 20, 2022, 11:00a.m. at Fairview Memorial Park, 700 Yale Blvd, SE. Roger will be remembered for his sense of humor, wonderful laugh, love of animals, humanity and so many wonderful qualities. In lieu of flowers, please donate to organizations Roger supported which include environmental causes, animal welfare, MD Anderson Cancer Center or other cancer organizations, Presbyterian Healthcare Foundation or the charity of your choice. A Celebration of Life will be held at a later date; please visit this site for future updates: <https://www.frenchfunerals.com/obituary/Roger-Wagman>.

**Rachel Mary Christine Ambler**, age 54, of Odessa, Texas, passed on Aug. 10, 2022. She was born December 23, 1967 in Castro Valley, California to Peter William Arthur Ambler and Christine Mary (Shaw) Ambler. Rachel graduated from Trinity Valley High School in Fort Worth, Texas, and she graduated Summa Cum Laude from University of Texas at Permian Basin in Odessa, Texas, with a Bachelor of Arts in History. Rachel graduated Cum Laude from Saint Mary's Law School in San Antonio, Texas, where she earned her Doctor of Jurisprudence. While in law school, Rachel was on the St. Mary's Law Journal. She was a member of The John M. Harlan Society and Phi Delta Phi. Rachel received a scholarship from the Franklin Lindsay Student Aid Fund for law school. Rachel served internships in both the civil and criminal divisions of the U.S. Attorney's Office. She was a summer clerk for the Honorable Robert Junell, United States District Court for the Western District of Texas. While in law school, she clerked for a prestigious civil and bankruptcy litigation firm in San Antonio. Rachel has authored several magazine articles, legal book reviews and law journal articles. She co-authored a comprehensive legal textbook on Texas Community Property and Marital Law, which is now in its second edition. Her textbook is being used at St. Mary's University School of Law and Texas A&M University School of Law. Rachel was on the Board of Directors of the Texas Trial Lawyers Association. She also served on the Continuing Legal Education Committee and the Listserv Committee. Rachel was licensed to practice law in Texas and New Mexico. She was admitted to practice before the Federal Courts of New Mexico, the Western District of Texas, and the Northern District of Texas. She was a member of the Texas Bar Association, the American Bar Association, the Federal Bar Association, the Midland County Bar Association, the Ector County Bar Association, the Texas Trial Lawyers Association, the New Mexico Trial Lawyers Association and the Permian Basin Trial Lawyers Association. She was a Member of the College of the State Bar of Texas. Rachel was an active member of the Texas Trial Lawyers Association and gave several presentations at numerous legal conferences.

She was honored by the Texas Trial Lawyers Association as the winner of the 2018 John Howie Spirit of Mentorship Award. She was a 2022 and 2021 Texas Super Lawyer and a 2018, 2019, 2020, and 2021 Texas Super Lawyers Rising Star. Rachel was selected to join America's Best Trial Lawyers Law firms in 2022 and 10 Best Attorneys for Texas by American the Institute of Personal Injury Attorneys in 2022. Rachel was a vivacious woman with a fierce passion for the law, gracing the courts with her unwavering determination to ensure her clients received justice. Rachel's passions extended far beyond the law, as her love for the arts led her to join the Odessa Council for the Arts & Humanities and she was an avid art collector, especially when it came to artists such as Banksy, Mr. Brainwash, and Andy Warhol. Throughout her life, Rachel championed a number of causes including animal rights, racial equality, LGBTQ+ rights, and women's rights, including the freedom of choice. Rachel also had a deep love for her husband Frank Hunold, who was by her side for 23 years. Rachel was a rock both for her parents and her nieces and nephew. Rachel was truly a wonderful woman who touched the lives of all of whom she loved deeply. In lieu of flowers, donations can be made to Love-a-Bull, 2900 W. Anderson Lane, C-200 #304, Austin, Texas 78757. Rachel is survived by her husband, Frank Hunold; father, Peter Ambler; mother, Christine Ambler; nieces and nephew, Emmanuelle Harrison, Julia Harrison, Abigail Harrison and Simon Peter Harrison.

# Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Elizabeth A. Garcia, Chief Clerk of the New Mexico Supreme Court  
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

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## CLERK'S CERTIFICATE OF LIMITED ADMISSION

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On August 22, 2022:

**Eric Charette**

New Mexico Legal Aid, Inc.  
P.O. Box 25486  
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Suite 700 (87102)  
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ericc@nmlegalaid.org

**Nathan Mulvihill**

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nathan.mulvihill@da2nd.  
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On August 29, 2022:

**Eric McMahon**

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500 N. Main Street, Suite 105  
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## CLERK'S CERTIFICATE OF ADMISSION

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On September 2, 2022:

**Richard Aidan Lucio**

U.S. Army JAG Corps  
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On August 1, 2022:

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**CLERK'S CERTIFICATE  
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**CLERK'S CERTIFICATE  
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# Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

**Opinion Number: 2022-NMSC-014**  
No: S-1-SC-38769 (filed June 16, 2022)

STATE OF NEW MEXICO,  
Plaintiff-Petitioner,  
v.  
JESENYA O.,  
Child-Respondent.

**ORIGINAL PROCEEDING ON CERTIORARI**

Donna J. Mowrer, District Judge

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for Respondent

## OPINION

### ZAMORA, Justice.

{1} This appeal calls upon us to consider issues relating to the authentication of social media evidence. Specifically, we are asked to review a determination by the Court of Appeals that the district court abused its discretion in authenticating screenshots of Facebook Messenger messages allegedly initiated by Jesenya O. (Child) in the near aftermath of the events giving rise to the underlying delinquency proceeding. *State v. Jesenya O.*, 2021-NMCA-030, ¶ 29, 493 P.3d 418. As part of this inquiry, we consider as a matter of first impression whether admissibility of such evidence should be governed by the traditional authentication standard set out in Rule 11-901 NMRA or by a heightened standard that seeks to account for the possibility that communications issued on social media platforms may be especially susceptible to fraud or impersonation.

{2} We agree with the Court of Appeals that the traditional authentication standard set out in Rule 11-901 provides the appropriate legal framework for authenticating social media evidence. *Jesenya O.*,

2021-NMCA-030, ¶ 21. But we disagree with the conclusion reached by the Court of Appeals that the State failed to meet the threshold for authentication established under that rule, much less that the district court abused its discretion in finding the State had met its burden. *Id.* ¶ 29. We hold the State's authentication showing was sufficient under Rule 11-901 to support a finding that, more likely than not, the Facebook Messenger account used to send the messages belonged to Child and that Child was the author of the messages. Accordingly, we reverse the Court of Appeals and reinstate Child's delinquency adjudications.

#### I. FACTUAL AND PROCEDURAL BACKGROUND

{3} Child, then age seventeen, became Facebook friends with a former schoolmate, Jeremiah Erickson (Erickson), then age nineteen. Over the next several weeks, the two conversed primarily, if not exclusively, through their respective Facebook Messenger accounts. Facebook Messenger is an instant messaging service which allows users to communicate with one another from within Facebook or via a stand-alone application. See *Messenger From Meta*, <https://about.facebook.com/technologies/>

messenger/ (last visited June 1, 2022). Facebook users may access the application from a variety of devices, including desktop computers, mobile phones, and tablets. *Id.* On two occasions, Child and Erickson used Facebook Messenger to arrange in-person meetings, during which Erickson drove to Child's house to pick her up and drive her somewhere to "hang out."

{4} It was the second of these meetings that gave rise to the events leading to Child's adjudication. Both Erickson and Child testified to the jury that their get-together on the night of February 24, 2020, did not end well, although each provided a different narrative as to what unfolded. According to Erickson, Child had acted "weird" at the get-together and appeared to be high or drunk. He testified that, while he was driving Child home, she asked him to park his vehicle near a home located on an alley behind a furniture store, which he did, leaving the engine running and the driver's side door open. According to Erickson, after the two exited the car to say good night, Child pushed him out of the way, assumed control of the vehicle, and drove off by herself, crashing through a chain-link fence, striking a dumpster, and driving the car out of Erickson's sight.

{5} Child's testimony painted a different picture. According to Child, Erickson was drunk and driving recklessly on the way to her home. She testified that he made advances toward her and that he stopped the car in the alley after she rejected them. According to Child, both parties exited the vehicle, Child asked if she could drive the vehicle, Erickson refused, and Child then told Erickson she would not get back in the car with him. Child began to walk down the alley with Erickson following her. Child testified she ran away from Erickson in fear and walked the rest of the way home alone. On cross-examination, Child claimed she did not have her phone with her after leaving Erickson's vehicle.

{6} At Child's adjudication, the State sought to introduce evidence of communications between Child and Erickson the State alleged took place on Facebook Messenger the day after the incident involving Erickson's vehicle. The evidence was proffered in the form of two screenshots (hereinafter "the February 25 messages") showing communications between a user identified as

<sup>1</sup> Facebook changed its company brand to "Meta" in 2021. See *Introducing Meta: A Social Technology Company*, <https://about.fb.com/news/2021/10/facebook-company-is-now-meta/> (last visited June 1, 2022). Throughout this opinion, we refer to the company name in use when the messages at issue were allegedly sent, i.e., Facebook.

Erickson and a user identified by name and photograph as Child. The messages reflected the following exchange:

[Child]: Your car!!  
 [Child]: I was drunk as fuck  
 [Child]: I'm so sorry.  
 [Child]: Did u call the cops on me  
 [Erickson]: Had to.  
 [Child]: And u gave them my name?  
 [Erickson]: Had to. What you did was beyond fucked up.  
 [Erickson]: And now I'm in deep shit for it.  
 [Child]: I'm IN DEEP SHIT  
 [Child]: I was completely drunk I don't know what I was doing  
 [Erickson]: Well we're both fucked.  
 [Child]: Yeah no kidding.  
 [Child]: I'm going to jail  
 [Erickson]: I can't believe you took my car to Clovis and totaled it.  
 [Child]: I was drunk.

{7} The State sought to authenticate the February 25 messages through Erickson's testimony as to his personal knowledge of both the accuracy of the screenshots and his history of Facebook Messenger communications with Child, as well as through the contents of the messages themselves. Child's trial counsel objected to the authentication of the exhibits, arguing the screenshots did not show with certainty that the messages were sent from Child's Facebook account and emphasizing what counsel characterized as the inherent difficulty in "lay[ing] a foundation on Facebook Messenger messages because anybody can have access to somebody's phone or Facebook account." The district court overruled the objection, and the evidence was admitted. Child was subsequently adjudicated delinquent and appealed the district court's judgment and disposition to the Court of Appeals.

{8} On appeal, Child challenged the foundation laid by the State for the screenshots of the February 25 messages. The Court of Appeals reversed based solely on the authentication issue. *Jesanya O.*, 2021-NMCA-030, ¶¶ 29, 36. It concluded that, while communications arising on

social media platforms are subject to the same authentication requirements as other evidence subject to Rule 11-901, the State had failed in its burden to properly authenticate the messages. *Jesanya O.*, 2021-NMCA-030, ¶¶ 24-29. In so holding, the Court of Appeals focused in part on the fact that the content of the messages was not "sufficiently confidential to establish that *only* Child could have authored the messages." *Id.* ¶ 28 (emphasis added). The Court concluded the error in admitting the messages for the jury's consideration was not harmless, vacated Child's adjudications, and remanded for a new hearing. *Id.* ¶¶ 30-36, 68.

{9} We granted the State's petition for certiorari review of whether the Court of Appeals imposed the correct standard for authenticating the messages at issue and whether it applied the appropriately deferential standard of review to the district court's decision to admit the messages as evidence. We conclude that the Court of Appeals properly relied on the traditional standard under Rule 11-901 as the framework for assessing the authenticity of the February 25 messages, but that it misapplied the provisions of Rule 11-901(B)(1) and (B)(4) to the facts and circumstances of this case and failed to afford proper deference to the district court.

## II. DISCUSSION

### A. Standard of Review

{10} We "generally review evidentiary matters for an abuse of discretion." *State v. Montoya*, 2014-NMSC-032, ¶ 15, 333 P.3d 935. "An abuse of discretion occurs when the [evidentiary] ruling is clearly against the logic and effect of the facts and circumstances of the case. We cannot say the [district] court abused its discretion by its ruling unless we can characterize it as clearly untenable or not justified by reason." *State v. Sanchez*, 2020-NMSC-017, ¶ 21, 476 P.3d 889 (internal quotation marks and citation omitted). In the authentication context, "there is no abuse of discretion when the evidence is shown by a preponderance of the evidence to be what it purports to be." *State v. Jimenez*, 2017-NMCA-039, ¶ 18, 392 P.3d 668 (internal quotation

marks and citation omitted). However, we review de novo the threshold legal question as to the proper framework within which to analyze a particular evidentiary issue. See *State v. Carrillo*, 2017-NMSC-023, ¶ 26, 399 P.3d 367 ("[T]he threshold question of whether the trial court applied the correct evidentiary rule or standard is subject to de novo review on appeal").

### B. The Traditional Standard Applied Under Rule 11-901 Provides the Proper Framework for Authenticating Evidence From Social Media Platforms

{11} For evidence to be properly authenticated under Rule 11-901 there must be a showing "sufficient to support a finding that the item is what the proponent claims it is." Rule 11-901(A). "The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances" may be considered in determining whether evidence has been adequately authenticated. Rule 11-901(B)(4). The foundation required to authenticate an item of evidence "goes to conditional relevancy," *State v. Arrendondo*, 2012-NMSC-013, ¶ 9, 278 P.3d 517, and triggers "a two-step procedure; the [trial] judge initially plays a limited [but important], screening role, and the jury then makes the final decision on the question of fact," ultimately determining the weight of the evidence. Edward J. Imwinkelried, *Evidentiary Foundations* § 4.01[1], at 43 (Matthew Bender 11th ed. 2020).

{12} With the increased use of social media evidence in litigation, courts nationwide have grappled with the question of whether the authenticity of evidence from social media platforms is properly measured under the traditional rules of authentication found in Federal Rule of Evidence 901 and its many state counterparts, including our own, or, instead, whether judicial concerns over the increased dangers of falsehood and fraud posed by the relative anonymity of social media evidence warrant the adoption of heightened authentication standards. There are two opposing lines of authority on this issue.

<sup>2</sup> The Maryland Court of Appeals (consolidating three cases to address authentication of social media) has since endorsed the traditional approach. *Sublet v. State*, 113 A.3d 695 (Md. 2015). While not formally overruling *Griffin*, the *Sublet* Court adopted the reasoning of the Second Circuit in *United States v. Vayner*, 769 F.3d 125 (2d. Cir. 2014) and held that, "in order to authenticate evidence derived from a social networking website, the trial judge must determine that there is proof from which a reasonable juror could find that the evidence is what the proponent claims it to be." *Sublet*, 113 A.3d at 698. Once this threshold showing has been made, the evidence is admissible, and it is the fact-finder who determines whether the evidence is reliable and, ultimately, authentic. See *Sublet*, 113 A.3d at 715-16 (stating that authentication of evidence "merely renders [it] admissible, leaving the issue of its ultimate reliability to the jury."). Nevertheless, *Griffin* remains "one of the key cases" in the development of this area of the law, cited for the proposition that social media evidence should be subjected to a heightened degree of scrutiny for authentication purposes. See 2 Robert P. Mosteller et al., *McCormick on Evidence* § 227, at 108-09 & n.25 (8th ed. 2020); see also *State v. Hannah*, 151 A.3d 99, 104-05 (N.J. Super. Ct. App. Div. 2016) (describing the "Maryland approach" as "requir[ing] greater scrutiny than letters and other paper records" (internal quotation marks and citation omitted)).

{13} Among the cases widely cited as embracing a heightened standard of authentication for social media evidence is *Griffin v. State*, decided by the Maryland Court of Appeals, 19 A.3d 415 (Md. 2011). In *Griffin*, a murder prosecution, the state sought to authenticate a redacted printout of a MySpace page allegedly belonging to the defendant's girlfriend. *Id.* at 418-19. The printout included information about the user's username, location, birthdate, and a profile photo depicting a couple embracing. *Id.* at 418. It also included this post: "FREE BOOZY!!!! JUST REMEMBER SNITCHES GET STITCHES!! U KNOW WHO YOU ARE!!" *Id.* The state sought to authenticate the printouts through the testimony of the lead investigator in the case, who testified that he was able to determine that the MySpace page belonged to the defendant's girlfriend because the user's profile photograph depicted her with the defendant, the birth date matched that of the defendant's girlfriend, and the content of the message referred to the defendant, whose nickname was "Boozy." *Id.* The trial court admitted the MySpace evidence. *Id.* at 419.

{14} The *Griffin* Court, over a two-judge dissent, concluded that the trial court "abused [its] discretion in admitting the MySpace profile [under Maryland Rule of Evidence] 5-901(b)(4)." *Griffin*, 19 A.3d at 423-24. It concluded that the display of the girlfriend's picture, "coupled with her birth date and location, were not sufficient[ly] 'distinctive characteristics' on a MySpace profile to authenticate its printout, given the prospect that someone other than [the defendant's girlfriend] could have not only created the site, but also posted the 'snitches get stitches' comment." *Id.* In so holding, the Court declined to endorse the traditional authentication approach and instead applied heightened scrutiny to social media evidence "because of the heightened possibility for manipulation by other than the true user or poster." *Id.* at 424.

{15} The *Griffin* Court acknowledged that its holding did not mean "that printouts from social networking [web]sites should never be admitted." *Griffin*, 19 A.3d at 427. The Court suggested the party proffering the evidence would be well advised to (1) "ask the purported creator if she indeed created the profile and also if she added the posting in question," (2) "search the computer of the person who allegedly created the profile and posting and examine the computer's internet history and hard drive to determine whether that computer was used to originate the social networking profile and posting in question," or (3) "obtain information directly from the social networking website

that links the establishment of the profile to the person who allegedly created it and also links the posting sought to be introduced to the person who initiated it." *Id.* at 427-28.

{16} While many courts have expressed similar concerns about fraudulent authorship of social media communications, few have adopted the heightened requirements for a prima facie showing announced in *Griffin*. Instead, they have endorsed the view that the traditional authentication standard is adequate to the task of vetting social media evidence. See generally *Tienda v. State*, 358 S.W.3d 633, 638-642 (Tex. Crim. App. 2012) ("Courts and legal commentators have reached a virtual consensus that, although [electronic media present] new . . . issues with respect to . . . admissibility . . . , the rules of evidence already in place for determining authenticity are at least generally adequate to the task." (internal quotation marks and citation omitted)).

{17} The traditional authentication approach is reflected in *Tienda, id.*, an oft-cited case from the Texas Court of Criminal Appeals. In *Tienda*, the defendant challenged the admission into evidence of several MySpace pages that tended to implicate him in a gang-related murder, including posts, photos, and instant messages. *Id.* at 634-37. The state relied primarily upon testimony by the victim's sister to authenticate the posts, which she found by searching MySpace. *Id.* at 635. The defendant objected, arguing that MySpace accounts could easily be created or accessed by someone other than the purported author. *Id.* at 636. The trial court admitted the evidence, and the Texas Court of Criminal Appeals affirmed. *Id.* at 637. Though acknowledging "the provenance" of social media evidence "can sometimes be open to question—computers can be hacked, protected passwords can be compromised, and cell phones can be purloined," *id.* at 641, the *Tienda* Court determined that "the internal content of the MySpace postings—photographs, comments, and music—was sufficient circumstantial evidence to establish a prima facie case such that a reasonable juror could have found that they were created and maintained by the [defendant]." *Id.* at 642. In so holding, the *Tienda* Court made clear that the state, as the proponent of the evidence, was not required to remove all doubt over the posts' provenance; this was a question for the jury to decide. *Id.* at 645-46 (recognizing that the "possibility that the [defendant] was the victim of some elaborate and ongoing conspiracy" to impersonate him on social media was a scenario for the jury to assess once the state had made a prima facie showing of authenticity).

{18} Today we clarify that, in New Mexico, the authentication of social media evidence is governed by the traditional authentication standard set out in Rule 11-901, which requires the proponent to offer "evidence sufficient to support a finding that the [evidence] is what the proponent claims it is." See *State v. Imperial*, 2017-NMCA-040, ¶ 28, 392 P.3d 658 (quoting Rule 11-901(A)). We reiterate that, in meeting this threshold, the proponent need not demonstrate authorship of the evidence conclusively; arguments contesting authorship go to the weight of the evidence, not its admissibility. See *State v. Jackson*, 2018-NMCA-066, ¶ 19, 429 P.3d 674 (holding that the fact that text messages could have been authored or received by someone other than the defendant did "not negate the admissibility of the text messages, but rather present[ed] an alternative to the State's suggested inferences," which would be for the jury to assess).

{19} Two considerations inform our decision. First, we agree with courts in other jurisdictions that the authentication challenges arising from the use of social media evidence in litigation are not so different in kind or severity from the challenges courts routinely face in authenticating conventional writings. As one court persuasively put it in analogous circumstances,

Rule 901 . . . does not care what form the writing takes, be it a letter, a telegram, a postcard, a fax, an email, a text, graffiti, a billboard, or a Facebook message. All that matters is whether it can be authenticated, for the rule was put in place to deter fraud. The vulnerability of the written word to fraud did not begin with the arrival of the internet, for history has shown a quill pen can forge as easily as a keystroke, letterhead stationery can be stolen or manipulated, documents can be tricked up, and telegrams can be sent by posers.

*State v. Green*, 830 S.E.2d 711, 714-15 (S.C. Ct. App. 2019) (citation omitted), *aff'd as modified*, 851 S.E.2d 440 (S.C. 2020). We are not convinced that the authentication of messages passed between Facebook users poses unique obstacles when compared to the authentication of evidence from other electronic sources, such as text messages sent between mobile devices. See *Jackson*, 2018-NMCA-066, ¶¶ 17-18 (concluding that the state's circumstantial evidence regarding the activity of two phone numbers was sufficient to authenticate an exhibit with information regarding the phone numbers).

{20} Second, the application of more demanding authentication requirements in the social media realm—such as those

propounded in *Griffin* involving testimony from the purported author of social media postings, as well as evidence gathered from the user's computer or the social media network itself—would too often keep from the fact-finder reliable evidence based on an artificially narrow subset of authentication factors. See Brendan W. Hogan, *Griffin v. State: Setting the Bar Too High for Authenticating Social Media Evidence*, 71 Md. L. Rev. Endnotes 61, 85-86 (2012) (observing that the authentication methods outlined in *Griffin* “are unnecessarily specific and fail to discuss other traditional methods of authentication”). Cabining a district court's authentication analysis in this way would ultimately serve to hinder the truth-seeking process, with no discernible benefit. See generally *State v. Trujillo*, 2002-NMSC-005, ¶ 16, 131 N.M. 709, 42 P.3d 814 (discouraging a reading of our rules of evidence that “would deprive the jury of reliable . . . evidence relevant to the jury's truth-seeking role”). We decline to impose additional authentication requirements for evidence that may be adequately vetted using the gatekeeping tools already at hand.

{21} Having determined that the traditional authentication standard arising under Rule 11-901 provides the appropriate framework for evaluating the authenticity of the February 25 messages, we next turn to the question of whether the Court of Appeals properly applied that framework in determining whether the district court abused its discretion in admitting the State's exhibits.

**C. The Court of Appeals Erred in Concluding That the District Court Abused Its Discretion in Admitting Evidence of the February 25 Messages**

{22} In reviewing Child's claim that the district court abused its discretion in admitting the February 25 messages, the Court of Appeals correctly held that “our rules for authentication provide an appropriate framework for determining admissibility.” *Jesanya O.*, 2021-NMCA-030, ¶ 21. However, the Court then applied an unduly exacting standard in concluding that, because Child denied sending the messages, the State failed to proffer business records connecting the messages to Child, and the communications themselves failed “to establish that only Child could have authored [them],” “the district court abused its discretion in admitting the [evidence].” *Id.* ¶¶ 26-29.

{23} “Rule 11-901(B) provides a non-exhaustive list of examples of evidence that satisfy the authentication requirement.” *Salehpoor v. N.M. Inst. of Mining and Tech.*, 2019-NMCA-046, ¶ 27, 447 P.3d 1169. For instance, evidence may be

authenticated by a witness with knowledge “that an item is what it is claimed to be.” Rule 11-901(B)(1). The authentication of evidence may also be “based on distinctive characteristics [such as] appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.” *Salehpoor*, 2019-NMCA-046, ¶ 27 (internal quotation marks and citation omitted).

{24} Here, the State proffered several indicia of Child's authorship of the disputed messages, including the presence of Child's name and profile photo on the exchanges, testimony from Erickson, the person who received the messages, and strong contextual clues as to authorship revealed in their content. This evidence was sufficient to support the district court's finding that a reasonable juror could determine that Child authored the messages and that the exhibits displaying the messages were what the State claimed them to be. See Rule 11-901(A) (providing that the authentication requirement is satisfied if the proponent “produce[s] evidence sufficient to support a finding that the item is what the proponent claims it is”).

{25} We start by acknowledging that the presence of what appear to be Child's name and photo on the February 25 messages was, standing alone, insufficient to establish that the messages were issued by Child or from her account. See *State v. Acosta*, 489 P.3d 608, 625 (Or. Ct. App. 2021), *appeal dismissed and opinion vacated on other grounds*, 504 P.3d 1178, (Or. 2022) (concluding that the appearance of Facebook messages that seemingly were sent from “an account that bore [the] defendant's name and included pictures that matched [the] defendant's physical appearance,” were “not dispositive” of the issue of authentication). However, evidence of the appearance of social media messages, including usernames and profile pictures, may be probative circumstantial evidence of authentication when considered in conjunction with additional factors of relevance. See *id.* at 625-26 (identifying “[a] Facebook account matching [the] defendant's name and profile picture” as one of several factors that could prompt a reasonable person to conclude that “it was [the] defendant and not one of [his cohorts] who was sending messages from the [defendant's] profile”); *Parker v. State*, 85 A.3d 682, 688 n.43 (Del. 2014) (noting that a photo and profile name appearing on the printout of a Facebook page “are certainly factors that [a] trial court may consider” in its authentication analysis).

{26} Here, the State provided additional foundational support through Erickson's undisputed testimony that he and Child had relied heavily, if not exclusively, on the

Facebook Messenger platform in conversing with each other during the weeks leading up to the incident at issue here. As an active participant in those earlier Facebook message exchanges, as well as the critical February 25 message exchange, Erickson was clearly “a witness with knowledge” of the Facebook messages within the meaning of Rule 11-901(B)(1). As such, he was well positioned to provide direct testimony that the State's exhibits accurately depicted the screenshots of the messages he received not long after the incident. See *Kays v. Commonwealth*, 505 S.W.3d 260, 269 (Ky. Ct. App. 2016) (upholding the authentication of Facebook messages attributed to the defendant where each message was introduced through and identified by the person who sent or received it and “each one [was] linked to the witness introducing it by personal knowledge”).

{27} Not only did Erickson provide unchallenged testimony concerning his prior course of dealing and history of communication on Facebook with Child, he also testified that he continued to follow postings made by Child on the same Facebook account in the months between the car incident and the adjudicatory hearing. Thus, Erickson's testimony tended to establish that it was Child—and not someone posing as Child—who communicated with Erickson in the February 25 messages. To the extent that Child suggested in her testimony that someone else may have had access to her phone and authored the messages at issue, this was an assertion to be weighed by the jury in its consideration of the evidence and not a bar to its admissibility. See *Jackson*, 2018-NMCA-066, ¶ 19 (holding that the fact that text messages could have been authored or received by someone other than the defendant did “not negate the admissibility of the text messages, but rather present[ed] an alternative to the State's suggested inferences,” which would be for the jury to assess).

{28} Finally, the content and substance of the February 25 messages evince “distinctive characteristics” offering foundational support for their authenticity. See Rule 11-901(B)(4) (including “distinctive characteristics” among examples of what will satisfy the authentication requirement). As we have said, a proponent of evidence need not demonstrate authorship conclusively to satisfy the authentication requirement; to require otherwise would be to impose a heightened standard of admissibility on this type of evidence. See *State v. Candelaria*, 2019-NMCA-032, ¶ 55, 446 P.3d 1205 (concluding that evidence was admissible because it was “sufficient to permit a reasonable jury to believe” that it was what it purported to be and stating that arguments weighing against authenticity “went to the weight of the evidence,

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Day 1**4.5 G, 1.0 EP  
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Day 2**6.0 G  
9 a.m.–4:30 p.m.**OCTOBER 5***Webinar***Basics to Trust Accounting:  
How to Comply with  
Disciplinary Board Rule 17-204**1.0 EP  
9–10 a.m.*Webinar***We've Got Skin in the Game:  
Addressing the Impact of Racial  
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Health**1.0 EP  
Noon–1 p.m.**OCTOBER 6***Webinar***Communication Breakdown:  
It's Always The Same  
(But It's Avoidable)**1.0 G  
9–10 a.m.*Teleseminar***Social Media as Investigative  
Research and Evidence**1.0 EP  
11 a.m.–Noon**OCTOBER 7***In-Person or Webcast***2022 Health Law Symposium**3.5 G, 2.0 EP  
10 a.m.–4:30 p.m.**OCTOBER 12***Webinar***Mandatory Succession Planning:  
It Has To Happen, But It Doesn't  
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9–10 a.m.**OCTOBER 13***Webinar***How to Be a NATZ Ninja:  
An Overview of Naturalization  
and Citizenship**1.0 G  
Noon–1 p.m.**OCTOBER 19***Webinar***Essential Law Firm Technology:  
The Best Of What's Out There**1.0 G  
2–3 p.m.**OCTOBER 20***In-Person or Webcast***2022 Solo & Small Firm Institute**2.0 G, 4.0 EP  
9 a.m.–4:30 p.m.**OCTOBER 24***Webinar***Social Media as Investigative  
Research and Evidence**1.0 EP  
11 a.m.–Noon**OCTOBER 25***Webinar***Identifying and Combating  
Gender Bias: Examining the  
Roles of Women Attorneys in  
Movies and TV**1.0 EP  
11 a.m.–Noon**OCTOBER 26***Webinar***Ethics of Social Media Research**1.5 EP  
11 a.m.–12:30 p.m.**OCTOBER 27***Webinar***Law Practice Management  
For New Lawyers**1.0 G  
2–3 p.m.**NOVEMBER 2***In-Person or Webcast***2022 Business Law Institute**5.0 G, 1.0 EP  
9 a.m.–4:30 p.m.**NOVEMBER 9***In-Person or Webcast***Wait, My Parents Were Wrong?  
It's Not All About Me?  
(Stuart Teicher)**3.0 EP  
9 a.m.–12:15 p.m.*In-Person or Webcast***Learn by Doing: An Afternoon  
of Legal Writing Exercises  
(Stuart Teicher)**3.0 G  
1–4:15 p.m.

**NOVEMBER 10**

Webinar

**The Paperless Law Firm:  
A Digital Dream**

1.0 EP  
11 a.m.-Noon

**NOVEMBER 18**

In-Person or Webinar

**2022 Animal Law Institute:  
Animals, Agriculture  
and the Planet**

3.0 G, 1.0 EP  
9 a.m.-1:15 p.m.

**NOVEMBER 21**

Webinar

**Adobe Acrobat DC:  
The Basics for Lawyers  
and Legal Professionals  
The Paperless Law Firm:  
A Digital Dream**

1.0 G  
11 a.m.-Noon

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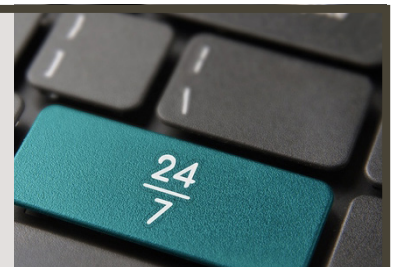
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not its admissibility”). In keeping with this principle, courts and commentators widely agree that for a writing, digital or otherwise, to be sufficiently distinctive for authentication purposes, “[t]he knowledge [of its contents] need not be uniquely held by the purported signer [or sender], but the smaller the group of persons with such knowledge, the stronger the desired inference of authorship.” 2 Robert P. Mosteller et al., *McCormick on Evidence* § 224, at 93 (8th ed. 2020). Thus, social media communications whose contents are known or knowable by only a handful of persons are routinely recognized as qualifying for authentication on the basis of their distinctive characteristics. See, e.g., *Sublet v. State*, 113 A.3d 695, 720-21 (Md. 2015) (upholding the authentication of Twitter messages that “referenced a plan” for retaliation “that had . . . been created in response to events occurring that same day” and was known by “only a small pool of [seven] individuals,” including the defendant); see also *Acosta*, 489 P.3d at 625 (concluding that the trial court erred in excluding Facebook messages that “included substance that was uniquely associated with [the] defendant” or only a very small group of people who were using the account at the time).

{29} The exclusive focus of the messages at issue here was the car incident of the previous night, with the person using Child’s profile initiating the discussion by expressing remorse for actions that night and asking Erickson whether he had reported the incident to the police. Given the short amount of time between the incident and the Facebook Messenger exchange, a reasonable juror could have determined that the number of parties in possession of the information revealed in the communications was very small.

{30} The Court of Appeals concluded that the State’s circumstantial evidence of authenticity was inadequate, in part because the content of the messages was not “sufficiently confidential to establish that *only* Child could have authored the messages.” *Jesanya O.*, 2021-NMCA-030, ¶ 28 (emphasis added). This test applied

by the Court of Appeals is at odds with the flexible approach that the authentication process envisions, under which the genuineness of a particular document—whether conventional or digital—is assessed through reliance on reasonable inferences, not absolute certainty. See *Jackson*, 2018-NMCA-066, ¶¶ 17-19 (concluding that the state’s circumstantial evidence regarding the activity of two phone numbers was sufficient to authenticate an exhibit with information regarding the phone numbers); see also *State v. Smith*, 181 A.3d 118, 136 (Conn. App. Ct. 2018) (rejecting the view that “the state bore the insurmountable burden of ruling out any possibility that the [Facebook] message was not sent by the defendant”); *Acosta*, 489 P.3d at 625-26 (“Even if it were *possible* that someone else sent the messages from the profile matching [the] defendant’s name and picture, the evidence was sufficient for a reasonable person to be satisfied that it was, in fact, [the] defendant who sent them.”); cf. *State v. Romero*, 2019-NMSC-007, ¶¶ 41-44, 435 P.3d 1231 (concluding that the “totality of the circumstances” surrounding a recording of an inmate’s phone call was sufficient to authenticate a detective’s identification of the defendant as the inmate on the call). Equally as important, such an approach fails to afford due deference to the discretion of the district court, which is charged with determining whether a preponderance of the evidence supports a finding of authenticity. See *Jimenez*, 2017-NMCA-039, ¶ 18 (“[T]here is no abuse of discretion when the evidence is shown by a preponderance of the evidence to be what it purports to be.” (internal quotation marks and citation omitted)).

{31} Where, as here, a proper foundation has been established under Rule 11-901, it is for the jury to decide whether a particular person or entity was the author or recipient of a given digital communication. In this regard, we endorse the authentication procedures previously outlined by our Court of Appeals in *Jackson*, a case involving an exhibit displaying cellular text messages. 2018-NMCA-066, ¶¶ 18-19. The *Jackson*

Court, faced with a defense argument that it was “possible” that persons other than the defendant authored the text messages in question, said:

It was for the jury to decide whether [the d]efendant was the author or recipient of the text messages in the exhibit. . . . [The d]efendant’s argument that the text messages in the exhibit could have been authored or received by someone else, does not negate the admissibility of the text messages, but rather presents an alternative to the State’s suggested inferences.

*Id.* ¶ 19. As *Jackson* instructs, Child’s argument, premised on the possibility that others could have sent the February 25 messages, went to the weight of the evidence, not its admissibility. *Id.* Accordingly, it was for the jury to assess that argument in determining, as an ultimate matter, whether the communications were authentic.

{32} We hold the appearance of the messages, the disputants’ frequent prior Facebook Messenger communications, and the content of the messages, when taken together and viewed in combination, were sufficient to support a finding that the screenshots of those messages were, more likely than not, what they purported to be. Given the highly deferential nature of abuse of discretion review, there was no cause to disturb the ruling made by the district court.

### III. CONCLUSION

{33} Because we hold the district court reasonably could find that the State met its low threshold of proof in establishing prima facie the authenticity of the February 25 messages, we reverse the Court of Appeals’ determination on that issue and reinstate Child’s delinquency adjudications.

{34} **IT IS SO ORDERED.**

**BRIANA H. ZAMORA, Justice  
WE CONCUR:**

**C. SHANNON BACON, Chief Justice  
MICHAEL E. VIGIL, Justice  
DAVID K. THOMSON, Justice  
JULIE J. VARGAS, Justice**

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2022-NMCA-019**

No: A-1-CA-37870 (filed December 20, 2021)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,

v.

ANDREW ONTIVEROS  
Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

John A. Dean Jr., District Judge

Certiorari Denied, March 29, 2022, No. S-1-SC-39186.

Released for Publication May 10, 2022.

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## OPINION

### HENDERSON, Judge.

{1} Defendant Andrew Ontiveros appeals the district court's denial of his motion to suppress evidence recovered from the vehicle he drove at the time of his arrest for driving while his license was revoked. He maintains that the inventory search of the vehicle offended his protections under the Fourth Amendment to the United States Constitution. We agree and reverse.

#### BACKGROUND

{2} Farmington Police Officer Alvin Bencomo observed a moving vehicle with a broken taillight and a cracked front windshield. He conducted a traffic stop of the vehicle, which promptly pulled over at a nearby trailer park. Upon pulling over, Defendant and his passenger (Passenger) exited the vehicle. Following commands from Officer Bencomo, Defendant and Passenger reentered the vehicle. Officer Bencomo then spoke with Defendant, asked him to again exit the vehicle, and requested his driver's license, which Defendant did not have.

{3} Officer Bencomo's investigation revealed that Defendant's driver's license was revoked. Defendant informed Officer

Bencomo that the vehicle belonged to his grandmother (Grandmother), who was not at the scene. Officer Bencomo verified that Grandmother was the registered owner, though it is unclear if this verification included her address. Defendant further informed Officer Bencomo that the trailer next to Grandmother's vehicle was Grandmother's home, but Officer Bencomo did not verify this information. Officer Bencomo arrested Defendant for driving with a revoked license. Defendant and Passenger asked Officer Bencomo if the vehicle could be left where it was, or if Grandmother could be contacted. Officer Bencomo responded that towing the vehicle was "just policy." Passenger left the scene on foot after being told he was free to leave by Officer Bencomo. {4} Officer Bencomo took inventory of the vehicle's contents because he intended to have the vehicle towed. The inventory search revealed a container with marijuana inside, a digital scale with marijuana residue, and a pill bottle that contained methamphetamine and other controlled substances. Defendant was charged with, among other things, possession of a controlled substance, contrary to NMSA 1978, Section 30-31-23(A) (2011, amended 2021), and driving while his license was revoked, contrary to NMSA 1978, Section 66-5-39.1 (2013).

Defendant filed a motion to suppress the evidence obtained from the vehicle, arguing that such evidence was obtained in violation of the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution.

{5} The district court held a hearing on the motion. Officer Bencomo testified that Defendant's car was towed "according to [Farmington Police Department] policy" because "[Defendant] was under arrest." A copy of the Farmington Police Department's policy for towing vehicles was admitted as an exhibit. Though Officer Bencomo acknowledged that he was not required by policy to tow the vehicle because the Farmington Police Department policy instructs officers to tow vehicles only when it is "reasonably necessary[,]," he testified that it was his standard practice to have the vehicle towed every time he arrests a driver. Officer Bencomo stated that while he knew the vehicle was parked at the owner's home, he felt towing it was necessary to protect the vehicle.

{6} At the hearing, the district court made an oral finding that the vehicle was in the parking space belonging to Grandmother's trailer. However, it entered a written order denying the motion to suppress, determining that "[i]t was reasonable for law enforcement to tow [the] vehicle despite the vehicle's location on private property[ and] the potential to release the vehicle to . . . [G]randmother, . . . because a vehicle and it's [sic] contents are items of value that could be damaged or stolen and subject law enforcement to liability." Defendant pleaded guilty to possession of a controlled substance and driving on a revoked license, and admitted to violating his conditions of probation in another case because of these charges. Both the guilty pleas and the admissions were conditioned on his right to appeal the district court's ruling on his motion to suppress.

#### DISCUSSION

##### The Inventory Search of the Vehicle Offended Defendant's Fourth Amendment Protections

{7} On appeal, Defendant maintains that the warrantless search of the vehicle offended his protections under the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. The State argues that the search of the vehicle was a valid inventory search. For the reasons that follow, we agree with Defendant. As we explain, because we reverse on Fourth Amendment grounds, we need not analyze Defendant's arguments made pursuant to the New Mexico Constitution.



**Standard of Review**

{8} “Appellate courts review a district court’s decision to suppress evidence based on the legality of a search as a mixed question of fact and law.” *State v. Ryon*, 2005-NMSC-005, ¶ 11, 137 N.M. 174, 108 P.3d 1032. We review the district court’s factual findings under a substantial evidence standard in the light most favorable to the prevailing party, and its conclusions of law de novo. *State v. Lopez*, 2009-NMCA-127, ¶ 7, 147 N.M. 364, 222 P.3d 361. “Substantial evidence is that which is acceptable to a reasonable mind as adequate support for a conclusion.” *State v. Sanchez*, 2001-NMCA-109, ¶ 14, 131 N.M. 355, 36 P.3d 446.

{9} When parties raise arguments pursuant to both the United States and New Mexico Constitutions, we take the interstitial approach to constitutional interpretation. *State v. Gomez*, 1997-NMSC-006, ¶¶ 20-21, 122 N.M. 777, 932 P.2d 1. Using this approach, “we ask first whether the right being asserted is protected under the federal constitution. If it is, then the state constitutional claim is not reached.” *State v. Tapia*, 2018-NMSC-017, ¶ 12, 414 P.3d 332 (internal quotation marks and citation omitted). Where the federal constitution does not offer protection, only then do we turn to the state constitutional claim. *Id.*

**Inventory Search Exception**

{10} The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Warrantless searches are presumptively unreasonable. *State v. Gutierrez*, 2004-NMCA-081, ¶ 6, 136 N.M. 18, 94 P.3d 18. The burden of proving that a warrantless search was valid is borne by the State and is met by proving that an exception to the warrant requirement applies. *State v. Rowell*, 2008-NMSC-041, ¶ 10, 144 N.M. 371, 188 P.3d 95. “Inventory searches are now a well-defined exception to the warrant requirement of the Fourth Amendment.”<sup>1</sup> *State v. Davis*, 2018-NMSC-001, ¶ 11, 408 P.3d 576 (alteration, internal quotation marks, and citation omitted).

{11} Both Defendant and the State rely on *Davis* for their respective arguments here. We agree with the parties that *Davis* governs our analysis. In that case, our Supreme Court reaffirmed that a valid inventory search requires that “(1) the police have control or custody of the object of the search; (2) the inventory search is conducted in conformity with established police regulations; and (3) the search is reasonable.” *Id.* ¶ 12. There, a law enforcement officer followed a motorcyclist who the officer knew did not possess a valid driver’s license. *Id.* ¶ 3. The motorcyclist parked in the driveway of his home, removed his backpack, and left it atop a parked car in the motorcyclist’s open-air carport. *Id.* ¶¶ 3-4. Upon the motorcyclist’s arrest, the officer performed an inventory search of the backpack, which revealed marijuana. *Id.* ¶ 5.

{12} With regard to the first inventory search requirement, our Supreme Court held that law enforcement had control or custody of the backpack, reasoning that it was “made unsecure by the arrest” because the arrest prevented the motorcyclist “from further controlling” it, regardless of the backpack’s location on the motorcyclist’s private property. *Id.* ¶¶ 21-24, 26; *see also id.* ¶ 21 (“Police are rightly expected to protect and secure not only those items on an arrestee’s person or within the arrestee’s immediate control at the time of arrest, but any item belonging to the arrestee that is rendered unsecure by the arrest.”). As to the second factor, the Court held that the law enforcement policy at issue, i.e., taking inventory of all of the belongings in an arrestee’s possession, necessarily included “all of the belongings of an arrestee made unsecure by an arrest[,]” not merely those on the arrestee’s person. *Id.* ¶¶ 28-29. Finally, given the fact-specific inquiry that must govern an inventory search analysis, the Court concluded that the search was reasonable in light of law enforcement’s concern that the backpack may contain items of value that should be secured. *Id.* ¶¶ 24, 31.

**Police Control or Custody**

{13} *Davis* instructs that the relevant question in assessing law enforcement’s control or custody of a defendant’s possessions is “whether there is a reasonable nexus between the arrest and the seizure of the object to be searched.” *Id.* ¶¶ 14, 15. If a defendant possesses an object at the time of an arrest, “then a reasonable nexus exist[s] between the arrest and the seizure and inventory search of the [object].” *Id.* ¶ 16. The State argues that the reasonable nexus requirement is satisfied because Defendant could not have committed the crime for which he was arrested, i.e., driving

on a revoked license, without the vehicle that was searched because “the [vehicle] was the instrumentality used to commit the offense.” However, we disagree that *Davis* supports the State’s proposition.

{14} Our Supreme Court held that “a defendant ‘possesses’ any object that the defendant loses control over as a consequence of arrest and where that loss of control gives rise to the possibility that the object might be lost, stolen, or destroyed and the police potentially held liable for the loss, theft, or destruction.” *Id.* ¶ 18 (emphasis added). Through this lens, we ask “whether the object is made unsecure by the arrest.” *Id.* ¶ 21. The answer here is no. While Defendant lost control of the vehicle by virtue of his arrest, under the circumstances here, the loss of control did not result in a heightened risk that the vehicle may go missing or otherwise become damaged in his absence. Officer Bencomo testified, and the district court agreed, that the vehicle Officer Bencomo confirmed was registered to Grandmother was parked in the parking space that corresponded to Grandmother’s trailer. Although officers are expected to protect and secure property in a defendant’s control, the risk to security of the vehicle and its contents was no greater because of Defendant’s arrest than it was at any other time the vehicle was parked at the trailer without the owner immediately present.

{15} In light of these facts, we conclude that the vehicle was not rendered unsecure by Defendant’s arrest, and that Defendant’s loss of control of the vehicle did not increase the risk of loss, theft, or destruction to which the same vehicle was typically exposed while parked in the same location—its proper space at the vehicle owner’s home—on any other occasion.<sup>2</sup>

**Established Police Regulations**

{16} As to the second inventory search requirement, we first look to the applicable law enforcement regulations. The Farmington Police Department policy for towing vehicles states, in relevant part, that

[i]t is the policy of the Farmington Police Department to remove vehicles from the roadway or other property, public or private[,] by towing, when it is reasonably necessary to: safeguard the vehicle and/or its contents; to facilitate public safety and health in regards to unsafe vehicles, unlawfully operated vehicles, traffic obstructions, abandoned vehicles, or emergency situations; to lawfully seize a vehicle and its contents for evidentiary purposes[.]

<sup>1</sup> Defendant’s Fourth Amendment argument concerns only the inventory search exception to the warrant requirement. We limit our discussion accordingly.

....

Any vehicle towed at the direction of a law enforcement officer shall have a complete inventory of the vehicle's contents performed to protect the Farmington Police Department from liability and to safeguard the property rights of the owner of the vehicle's contents.

....

An officer may consider alternative methods of releasing the vehicle to the licensed owner, other than removing of a vehicle by towing, under situations wherein the volume of calls for service, roadway conditions, or other circumstances or factors allow for an officer to research alternative methods.

....

An officer may consider towing a vehicle . . . [w]henver the operator of the vehicle has been arrested[.]

Officer Bencomo's testimony at the suppression hearing indicates that he did not adhere to this policy, and instead made it his policy to always tow vehicles upon a driver's arrest.

{17} Defendant argues that this policy affords officers excessive discretion because it allows an officer to conduct an inventory search any time a driver is arrested. The State counters that, were we to accept Defendant's argument, we would strip officers of discretion and allow law enforcement to embrace an approach to inventory searches that will result in policies instructing law enforcement, at the time of a driver's arrest, to tow, and subsequently search, every vehicle or no vehicles at all. Neither argument is persuasive.

{18} We are mindful that "officers may exercise discretion in the course of deciding whether to conduct an inventory search or not[.]" and that the policy outlined above affords officers the discretion to decide whether a vehicle tow and inveni-

table inventory search is necessary. *Davis*, 2018-NMSC-001, ¶ 22 (citing *Florida v. Wells*, 495 U.S. 1, 4 (1990)). However, the discretion afforded officers in these situations necessitates balance with the Fourth Amendment's protections, which require that "individual police officer[s] must not be allowed so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of crime[.]" *Wells*, 495 U.S. at 4 (internal quotation marks and citation omitted).

{19} While Defendant maintains that the Farmington Police Department policy provides insufficient safeguards because officers can order a vehicle tow and inventory merely by conducting an arrest, this is not supported by the record. The policy itself states that "[a]n officer *may* consider towing a vehicle" in the instance of arrest, and that "[a]n officer *may* consider alternative methods of releasing the vehicle to the licensed owner, other than . . . towing[.]" (Emphasis added.) Furthermore, Officer Bencomo testified that the policy does not require officers to conduct a vehicle tow every time an individual is arrested. We decline Defendant's invitation to hold that the policy is facially violative of the Fourth Amendment because it provides officers discretion to tow vehicles in the instance of arrest. As our Supreme Court has explained, "officers may exercise discretion in the course of deciding whether to conduct an inventory search or not" and "[t]he facts of the particular case guide the inquiry as to the constitutionality of the inventory search." *Davis*, 2018-NMSC-001, ¶¶ 22, 24.

{20} As to the State's argument that holding in favor of Defendant will result in an "all or nothing" approach to inventory searches, we note that the situation the State warns of is precisely what occurred in this case. Officer Bencomo testified that it was his standard practice to "tow every car with any arrest . . . with drivers." While the State's argument is primarily concerned with preserving officer discretion, it is Officer Bencomo's failure to exercise discretion as outlined in the policy that contributes

to our holding today. Indeed, discretion involves "cautious discernment; . . . [i]ndividual judgment; [and] the power of free decision-making." *Discretion*, *Black's Law Dictionary* (9th ed. 2009). Officer Bencomo's practice of towing the vehicle every time a driver is arrested involves no discernment or decision-making based on the unique set of circumstances that he faces with every individual arrest. In fact, we do not perceive, and the State does not offer, an explanation for this generalized practice other than as a means to discover incriminating evidence, which is not a permissible investigatory motive.<sup>3</sup> See *Wells*, 495 U.S. at 4.

{21} In sum, Officer Bencomo's testimony indicates that he did not "consider" towing Defendant's vehicle as required by the Farmington Police Department policy. Rather, he would have had Defendant's vehicle towed regardless of the circumstances, without further consideration, simply because Defendant was under arrest. We therefore conclude that Officer Bencomo failed to adhere to established law enforcement policy.

#### Reasonableness

{22} Turning to the final inventory search requirement, we employ three considerations articulated by the Supreme Court of the United States in *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976), to assess if the inventory search was reasonable. *State v. Shaw*, 1993-NMCA-016, ¶ 10, 115 N.M. 174, 848 P.2d 1101. Generally, an inventory search is reasonable if it is made in accordance with established police regulations and in consideration of at least one of the following government interests: "(1) to protect the arrestee's property while it remains in police custody; (2) to protect the police against claims or disputes over lost or stolen property; or (3) to protect the police from potential danger." *Id.* While we have already concluded that Officer Bencomo did not adhere to established law enforcement policy, in the interest of clarity, we nevertheless offer analysis on these three considerations.

<sup>2</sup> At the suppression hearing, Officer Bencomo testified that he did not verify if Grandmother resided at the trailer and could not recall if his verification of her vehicle registration provided him with her address. Regardless, Officer Bencomo testified that he knew that the vehicle was parked at Grandmother's home. The district court's written order acknowledged that Officer Bencomo did not remember if Grandmother's vehicle registration provided her address. The order further states that the vehicle was parked "on private property[.]" and at the suppression hearing, the district court stated its belief that the vehicle was parked in the appropriate parking space for the trailer belonging to the registered owner of the vehicle, which, according to Officer Bencomo's testimony and the district court's order, was Grandmother. The parties do not dispute that the trailer belonged to Grandmother. We therefore assume that the trailer was Grandmother's home. See *State v. Slayton*, 2009-NMSC-054, ¶ 11, 147 N.M. 340, 223 P.3d 337 (stating that we deem as conclusive factual findings that are undisputed and supported by the record); see also *Lebeck v. Lebeck*, 1994-NMCA-103, ¶ 10, 118 N.M. 367, 881 P.2d 727 (noting that while the district court's oral remarks alone do not provide a basis for reversal, we may employ them to understand the district court's findings); *Jeantete v. Jeantete*, 1990-NMCA-138, ¶ 11, 111 N.M. 417, 806 P.2d 66 (providing that we "may consider the [district] court's verbal comments in order to clarify or discern the basis for the order or action of the court below").

<sup>3</sup> Defendant argues that Officer Bencomo was actively seeking incriminating evidence in this case. Given our disposition here, however, we need not address this. See *State v. French*, 2021-NMCA-052, ¶ 13 n.3, 495 P.3d 1198 (declining to address a question "unnecessary for the resolution of the case").

{23} Above, we concluded that the vehicle was not rendered unsecured by Defendant's arrest and loss of control over it, as it was parked in its typical parking space at its owners home, and thus was in no heightened danger because of Defendant's arrest compared to any other time the vehicle was parked at the trailer without the owner immediately present. With this in mind, as to the second consideration for reasonableness, we are unconvinced that an individual holds a colorable claim against law enforcement for secured property that was lost or stolen from the place it would remain whether or not the individual was arrested.

Unlike the backpack in *Davis*, an object so inherently portable that its presence in the open-air carport on the defendant's own property was insufficient to ensure its safety, we see no such protection necessary for the vehicle in question here. See 2018-NMSC-001, ¶ 25. Finally, we perceive no potential danger to police from a vehicle parked in its proper space at the vehicle owner's home. For these reasons, we conclude that the inventory search of the vehicle was not reasonable under the circumstances.

## CONCLUSION

{24} Concluding that the State did not bear its burden to demonstrate that the warrantless search of the vehicle was valid, we reverse the district court's order denying Defendant's motion to suppress. We therefore vacate Defendant's convictions for possession of a controlled substance and driving on a revoked license. We further vacate the disposition of Defendant's probation violations premised on these charges. The case is remanded to the district court for proceedings consistent with this opinion.

{25} **IT IS SO ORDERED.**

**SHAMMARA H. HENDERSON, Judge**

**WE CONCUR:**

**J. MILES HANISEE, Chief Judge**

**KRISTINA BOGARDUS, Judge**

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

**Opinion Number: 2022-NMCA-020**  
No: A-1-CA-38468 (filed January 6, 2022)

STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
FRANK A. LUCERO,  
Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

John A. Dean Jr., District Judge

Certiorari Denied, March 25, 2022, No. S-1-SC-39262.  
Released for Publication May 10, 2022.

Hector H. Balderas, Attorney General  
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Pro Se Appellant

## OPINION

### YOHALEM, Judge.

{1} Defendant Frank Lucero was charged with four misdemeanor traffic offenses in magistrate court. After a jury trial where Defendant was convicted on all counts, Defendant appealed to the district court for a trial de novo. Defendant was tried in the district court and again convicted on all counts.

{2} Defendant claims, for the first time on appeal to this Court, that the magistrate court lost subject matter jurisdiction when it denied him access to the names and addresses of jurors and potential jurors before trial. We conclude that Defendant's claim does not implicate the subject matter jurisdiction of the magistrate court, and, therefore, may not be raised for the first time on appeal to this Court.

{3} Defendant next seeks review of the district court's denial of his pretrial motions alleging reversible legal error by the magistrate court, and seeking remand to the magistrate court for a new trial. Defendant contends that the district court erred in reviewing the magistrate court

proceedings under an abuse of discretion standard, rather than conducting an independent review on a reconstructed record as Defendant claims is required by our Supreme Court's decision in *City of Farmington v. Piñon-Garcia*, 2013-NMSC-046, 311 P.3d 446. While we agree that *Piñon-Garcia* requires review of certain magistrate court orders by hearing de novo, we read *Piñon-Garcia* as limiting such review to orders of the magistrate court dismissing or refusing to dismiss the charges, or imposing or refusing to impose sanctions, for violation of procedural protections or constitutional rights. *See id.* ¶¶ 2, 11, 13. Appellate review is otherwise by trial de novo. *See id.* ¶ 2. Defendant's pretrial motions, which claimed reversible legal error by the magistrate court and sought remand to the magistrate court for a new trial, do not fall within *Piñon-Garcia*'s limited exception, and the remedy sought by Defendant—remand for a new trial in the magistrate court—is not a remedy available to the district court in an appeal from magistrate court. Thus, Defendant's only method of appeal from the magistrate court rulings he challenges is by trial de novo in the district court, which he received. We affirm Defendant's convictions.

## BACKGROUND

{4} Defendant was charged in the Chaves County magistrate court with one misdemeanor traffic violation and three petty misdemeanor violations.<sup>1</sup> Defendant entered a plea of not guilty as to each charge and requested a jury trial.

{5} Two days before trial, Defendant requested copies of jury questionnaires from the magistrate court clerk. The clerk informed Defendant that the magistrate court required a copying fee, totaling \$38.50, for copies of the jury questionnaires. Defendant told the court clerk that he was indigent, and requested free copies. The clerk informed Defendant that he would have to submit proof of indigency in order to qualify for free copies. Defendant has not alleged that he was denied an opportunity to review the questionnaires, only that he was denied free copies.

{6} The day before jury selection and trial, Defendant filed a completed "verified application for free process (for indigency)" on a form provided by the magistrate court, along with a motion to continue, asking to postpone his trial. The next morning, with the jury panel already in the courtroom for jury selection, the magistrate court orally denied Defendant's motion to continue his trial. The case then proceeded to jury selection and trial. Defendant, who appeared pro se, was permitted to question the jury panel and participate in jury selection. Once the jury was selected, Defendant was tried and convicted on all four counts.

{7} Defendant appealed his convictions to the Chaves County district court. Defendant then filed a pretrial motion in district court requesting appellate review of the magistrate court clerk's refusal to provide him free copies of the jury questionnaires and of the magistrate court's denial of his motion to continue his trial. Defendant also requested supplementation of the record on appeal in the district court with copies of the jury questionnaires. Defendant claimed that he was entitled to an independent review by the district court of the merits of the magistrate court's refusal to provide him free copies of jury questionnaires, and the ruling denying him a trial continuance. He claimed error by the magistrate court in violation of NMSA 1978, Section 38-5-11(C) (2005) (addressing procedures for review of jury questionnaires in the district court), as well as violation of his right to due process, and sought reversal of his convictions, and remand to the magistrate court for retrial.

<sup>1</sup> Driving while license suspended, NMSA 1978, § 66-5-39 (2013, amended 2019); no seat belts, NMSA 1978, § 66-7-372(A) (2001); no proof of insurance, NMSA 1978, § 66-5-229 (C)-(E) (1998, amended 2019); no registration, NMSA 1978, § 66-3-1(A) (2013, amended 2018).

{8} The district court agreed to review Defendant's pretrial motion to determine if there was reversible error in the magistrate court. The district court conducted a detailed review of the magistrate court proceedings, and heard argument on the merits from both parties. With respect to the magistrate court clerk's refusal to provide free copies of the jury questionnaires, the district court concluded that, although Section 38-5-11(C) requires that jury questionnaires be "made available for inspection and copying by a party to a pending proceeding[.]" the magistrate court correctly construed the statute to allow a fee to be assessed for copying, and to allow the court to require compliance with its procedure for verifying indigency before providing free copies. With respect to the magistrate court's denial of Defendant's motion for a continuance of trial, the district court found that the magistrate court "was well within its discretion" to deny the motion for a continuance.

{9} Having denied Defendant's pretrial motion, the district court held a de novo jury trial. Defendant was given free copies of the district court jury questionnaires prior to voir dire. Defendant was again convicted on all four counts.

{10} On appeal to this Court, Defendant has not raised any claim of error in the de novo trial leading to his conviction in the district court. He challenges only the district court's denial of his pretrial motions for reversal and remand to the magistrate court for retrial.

## DISCUSSION

### I. Defendant's Claim That He Was Tried by an Anonymous Jury in the Magistrate Court Does Not Implicate Subject Matter Jurisdiction, and, Therefore, May Not Be Raised For the First Time on Appeal

{11} We begin by addressing Defendant's claim, raised for the first time on appeal to this Court, that the magistrate court lost subject matter jurisdiction by proceeding to trial with an "anonymous" jury. We do not agree with Defendant's characterization of the jury as "anonymous." We understand Defendant's claim as simply a restatement of his claims that he was denied copies of the jury questionnaires containing the jurors names and addresses prior to jury selection, and was not able to supplement the record in the district court with the questionnaires because they had been destroyed pursuant to court rule prior to his request. The "question of whether a trial court has jurisdiction in

a particular case is a question of law that we review de novo." *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 171 P.3d 300.

{12} Defendant is correct that an attack on subject matter jurisdiction may be made at any time in the proceedings, even for the first time on appeal. *See State ex rel. Bevacqua-Young v. Steele*, 2017-NMCA-081, ¶ 6, 406 P.3d 547. Further, a lack of subject matter jurisdiction in the magistrate court would also remove jurisdiction from the district court. *See State v. Lynch*, 1971-NMCA-049, ¶ 7, 82 N.M. 532, 484 P.2d 374. We thus review jurisdiction as a threshold question. *See Bevacqua-Young*, 2017-NMCA-081, ¶ 6 ("The question of jurisdiction is a controlling consideration that must be resolved before going further in a proceeding." (internal quotation marks and citation omitted)).

{13} "Subject matter jurisdiction is the power to adjudicate the general questions involved in the claim." *Williams v. Rio Rancho Pub. Schs.*, 2008-NMCA-150, ¶ 10, 145 N.M. 214, 195 P.3d 879 (internal quotation marks and citation omitted). Jurisdiction is controlled by the Constitution and the Legislature. *See State v. Smallwood*, 2007-NMSC-005, ¶ 6, 141 N.M. 178, 152 P.3d 821 (stating that "our Constitution or Legislature must vest us with . . . jurisdiction").

{14} The source of a magistrate court's jurisdiction is Article VI, Section 26 of the New Mexico Constitution, and the statutes implementing that section. Article VI, Section 26 provides, in relevant part: "The [L]egislature shall establish a magistrate court to exercise limited original jurisdiction as may be provided by law." The Legislature has provided by statute that "[m]agistrates have jurisdiction in all cases of misdemeanors and petty misdemeanors[.]" NMSA 1978, § 35-3-4(A) (1985).

{15} Because the motor vehicle offenses with which Defendant was charged are misdemeanors and petty misdemeanors, the magistrate court had subject matter jurisdiction. *See id.* A violation of a constitutional or statutory right in the proceedings before a court usually does not deprive that court of jurisdiction. Instead, generally speaking, "[t]he only relevant inquiry in determining whether the court has subject matter jurisdiction is to ask whether the matter before the court falls within the general scope of authority conferred upon such court by the constitution or statute." *State v. Chavarria*, 2009-NMSC-020, ¶ 11, 146 N.M. 251, 208 P.3d 896 (alteration, internal quotation marks, and citation omitted). Defendant has not

identified any constitutional provision or statute granting the magistrate court jurisdiction that was violated, ignored, or exceeded by that court. Defendant's claim of procedural violations does not implicate the magistrate court's subject matter jurisdiction. Because Defendant's claim does not implicate subject matter jurisdiction, it may not be raised for the first time on appeal, and we do not consider it further.

### II. With the Limited Exception Identified by Our Supreme Court in Piñon-Garcia, the District Court's Appellate Review of Defendant's Claims of Error in the Proceedings in Magistrate Court Is by Trial De Novo

{16} We turn next to Defendant's appeal from the district court's denial of his pretrial motions.<sup>2</sup> Defendant filed pretrial motions in the district court claiming error by the magistrate court in failing to provide him free copies of jury questionnaires and in denying his motion for a continuance of trial to allow him more time to obtain and review those questionnaires. For these errors, Defendant sought remand to the magistrate court for a new trial.

{17} The parties disagree about whether the district court should have reviewed Defendant's claims that the magistrate court erred and, if so, the nature of that review and the nature of the remedy, if error was identified. For the reasons that follow, we conclude that Defendant was not entitled to review by hearing de novo in the district court of his claims that the magistrate court committed reversible legal error; appellate review was limited to a trial de novo, which he received.<sup>3</sup> We affirm the district court on this basis. *See, e.g., State v. Gallegos*, 2007-NMSC-007, ¶ 26, 141 N.M. 185, 152 P.3d 828 (holding that the appellate court will affirm the district court's decision if it is right for any reason, so long as it is not unfair to the appellant).

{18} "The right to appeal is . . . a matter of substantive law created by constitutional or statutory provision." *State v. Armijo*, 2016-NMSC-021, ¶ 19, 375 P.3d 415. We review de novo the interpretation of constitutional and statutory provisions. *Id.* "The proper interpretation of our [Supreme Court's] Rules of Criminal Procedure is a question of law that we review de novo[.]" as well. *Allen v. LeMaster*, 2012-NMSC-001, ¶ 11, 267 P.3d 806.

{19} With few exceptions, appeals from a magistrate court to the district court are by trial de novo. *See, e.g., Piñon-Garcia*, 2013-NMSC-046, ¶ 9 ("In a de novo appeal, the

<sup>2</sup> This discussion focuses on Issues 2 and 3 in Defendant's brief.

<sup>3</sup> We do not consider whether Defendant could have sought review of the claims of error he contends the magistrate court committed via extraordinary writ. *See State v. Foster*, 2003-NMCA-099, ¶ 10, 134 N.M. 224, 75 P.3d 824 (providing one possible course of redress for an aggrieved defendant is by petition for an extraordinary writ).



general rule is that a district court conducts a new trial as if the trial in the lower court had not occurred.”). Article VI, Section 27 (1966), the constitutional provision in effect at the time this case was brought,<sup>4</sup> granted district courts exclusive jurisdiction on appeal from decisions of inferior courts, including from magistrate courts. Article VI, Section 27 provided that “in all such appeals, trial shall be had de novo unless otherwise provided by law.” The statutory provisions enacted by the Legislature adopted the jurisdictional requirements of Article VI, Section 27. See NMSA 1978, § 35-13-2(A) (1996) (providing that “[a]ppeals from the magistrate courts shall be tried de novo in the district court”). NMSA 1978, Section 39-3-1 (1955) provides that magistrate court proceedings, and other inferior court proceedings not of record, “shall be tried anew in said courts on their merits, as if no trial had been had below.” Rule 5-826(J) NMRA provides that “[t]rials upon appeals from the magistrate . . . court to the district court shall be de novo.” These constitutional, statutory, and rule provisions were in effect when this case was filed.<sup>5</sup>

{20} Although recognizing that “[i]n a de novo appeal, the general rule is that a district court conducts a new trial as if the trial in the lower court had not occurred[.]” *Piñon-Garcia*, 2013-NMSC-046, ¶ 9, our Supreme Court, in *Piñon-Garcia*, construed Article VI, Section 27 of the New Mexico Constitution along with the statutes and rules implementing that constitutional provision, to require district courts to consider and decide pretrial motions seeking appellate review of a decision of an inferior court not of record in certain circumstances. The defendant in *Piñon-Garcia* claimed that the municipal court (in a proceeding not of record) had correctly dismissed his criminal complaint as a sanction for the failure of the city’s key witness to appear for trial. *Id.* ¶ 5. The defendant sought review by pretrial motion in the district court, claiming that there had been no abuse of discretion by the municipal court in dismissing the criminal complaint and that the dismissal should be honored by the district court. *Id.* ¶¶ 3, 5, 6. The city contended that the

only review available on appeal was a trial de novo and that it was entitled to try the defendant again without regard to the dismissal in municipal court. *Id.* ¶ 7. The district court agreed with the city, rejecting the defendant’s motion to dismiss. *Id.* ¶ 3. The city’s witness appeared and testified at trial in the district court, and the defendant was convicted. *Id.* ¶ 6.

{21} Our Supreme Court reversed, concluding that the district court must review, by hearing de novo, the defendant’s pretrial motion seeking affirmance of the municipal court’s dismissal. *Id.* ¶¶ 1, 12. Such review, the Court discussed, was essential to protect the inferior courts’ authority to grant relief “when constitutional safeguards and procedural rules, such as speedy trial, double jeopardy, or discovery rules, are violated.” *Id.* ¶ 2. *Piñon-Garcia* construes the voters’ purpose in adopting Article VI, Section 27 as both to provide for a new trial on appeal when inferior court proceedings are not conducted on the record, and also to “give true meaning to the power vested in [inferior] courts to enforce our procedural rules and the protections of the United States and New Mexico Constitutions.” *Piñon-Garcia*, 2013-NMSC-046, ¶ 13. Our Supreme Court observed that if the government is “guaranteed a new trial on appeal, regardless of its violation of procedural rules or violations of the United States or New Mexico Constitutions,” the orders of an inferior court enforcing those rules would be meaningless. *Id.* The Court held that reading the requirement for a trial de novo in the district court to allow the government to ignore the orders of an inferior court with impunity is an absurd interpretation of the intent of the voters and the Legislature. *Id.* Where the inferior court penalizes the government for speedy trial violations, discovery violations, or double jeopardy violations with dismissal of the charges, the government is not entitled to a trial de novo if the inferior court’s dismissal is well-founded.

{22} We read *Piñon-Garcia*’s exception to the general rule of trial de novo—permitting instead appellate review by hearing de novo—as limited to those pretrial motions seeking review of orders of the magistrate

court dismissing or refusing to dismiss the charges, or imposing or refusing to impose sanctions, for violation of procedural protections or constitutional rights.<sup>6</sup> See *id.* ¶¶ 2, 11, 13. Extensive New Mexico precedent, including cases decided by this Court prior to *Piñon-Garcia*, and cited with approval in *Piñon-Garcia*, and cases decided since *Piñon-Garcia*, uniformly require the district court to consider and decide pretrial motions by de novo review, which require the district court to determine whether the inferior court properly dismissed the charges or properly excluded evidence as a sanction. See, e.g., *State v. Sharp*, 2012-NMCA-042, 276 P.3d 969 (reviewing the magistrate court’s dismissal for the state’s violation of the six-month rule); *State v. Gallegos*, 2007-NMCA-112, 142 N.M. 447, 166 P.3d 1101 (reviewing the validity of the defendant’s no contest plea in magistrate court, to determine if the appeal should be dismissed); *State v. Foster*, 2003-NMCA-099, 134 N.M. 224, 75 P.3d 824 (reviewing the defendant’s claim that his trial in the magistrate court violated double jeopardy, requiring dismissal of the charges); *State v. Hicks*, 1986-NMCA-129, 105 N.M. 286, 731 P.2d 982 (reviewing the magistrate court’s decision that the state’s late filing of the criminal complaint was not jurisdictional error, requiring dismissal of the charges); *State v. Baca*, 2015-NMSC-021, 352 P.3d 1151 (reviewing whether the defendant had been acquitted in the magistrate court, requiring dismissal of the charges, and precluding a trial de novo in the district court); *State v. Vanderdussen*, 2018 NMCA-041, 420 P.3d 609 (reviewing a magistrate court’s declaration of a mistrial to determine if a trial de novo was barred on double jeopardy grounds); *State v. Verrett*, 2019-NMCA-010, 458 P.3d 529 (reviewing a magistrate court’s order excluding evidence as a sanction against the state for a discovery violation). In all but one of these cases, the pretrial motion determined whether the case would be dismissed, without a trial de novo. In *Verrett*, the pretrial motion determined whether evidence would be excluded in the trial de novo. *Id.* ¶ 3.

<sup>4</sup> References to N.M. Const. art. VI § 27 in this opinion are to the 2016 version applying the 1966 amendment (prior to the 2018 amendment), unless otherwise noted.

<sup>5</sup> Article VI, Section 27, was amended by the voters in 2018 to remove from the Constitution both the requirements that appeals from inferior courts always be taken to the district court and that the appeal always be de novo. The amendments give the Legislature flexibility to modify these requirements by statute. There has been no change in the statutes and rules governing appeals from magistrate courts, and, therefore, no change in the relevant jurisdictional requirements.

<sup>6</sup> There, of course, is another category of pretrial motions that are subject to review by hearing de novo in the district court—i.e., rulings by inferior courts suppressing evidence for search and seizure violations. See *State v. Heinsen*, 2005-NMSC-035, 138 N.M. 441, 121 P.3d 1040 (allowing the state to dismiss the complaint in magistrate court and refile in district court to obtain review of a magistrate court ruling suppressing evidence). Defendant, in this case, does not raise any claims related to a ruling suppressing evidence by the magistrate court. We, therefore, do not consider this exception to the general rule of trial de novo further in this opinion.

{23} In contrast, Defendant’s pretrial motion sought review of what Defendant claimed was reversible legal error in the magistrate court. Defendant sought remand to the magistrate court for a new trial, the remedy available in traditional on the record appeals where reversible legal error is identified by the appellate court. *See Foster*, 2003-NMCA-099, ¶ 9 (providing that when “the district court acts as a typical appellate court[,]” the court “review[s] the record of the lower court’s trial for legal error”); *Lockhart v. Nelson*, 488 U.S. 33, 38 (1988) (providing that retrial is permitted after a conviction has been set aside on direct appeal for a defect constituting reversible error).

{24} Defendant did not allege that any violation of his constitutional rights by the State required dismissal of the charges against him or that sanctions imposed by the magistrate court should apply in his trial de novo. Defendant sought remand for a new trial in the magistrate court (and continues to seek that remedy on appeal to this Court), but fails to point to any authority permitting this type of review and remedy in this context. *See, e.g., Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 (“Where a party cites no authority to support an argument, we may assume no such authority exists.”). Nor are we aware of any.

{25} Indeed, there is authority prohibiting such a remand. *See State v. Begay*, 2010-NMCA-089, ¶ 14, 148 N.M. 685, 241 P.3d 1125 (holding that when a defendant is entitled to a de novo hearing in district court “then the order remanding for a new hearing [in magistrate court] is in error”). Although there are rules of procedure that allow transfer of cases between district court and magistrate court, the circumstances when this is allowed are strictly limited. *See State v. Ahasteen*, 1998-NMCA-158, ¶ 16, 126 N.M. 238, 968 P.2d 328 (“Transfers of jurisdiction from one court to another . . . are provided for by the rules of criminal procedure for each court.”), *abrogated on other grounds by State v. Savedra*, 2010-NMSC-025, 148 N.M. 301, 236 P.3d 20. For example, the district court can remand to the magistrate court for a finding of probable cause to prosecute, *see* Rule 5-302(E) NMRA, or remand to enforce or vacate a judgment following the completion of an appeal by trial de novo in the district court, *see* Rule 5-826(L). Transfer from magistrate court to district court is permitted for the district court to make a competency determination. *See* Rule 6-507.1(G) NMRA. After such determination, the district court then remands back to the magistrate court. *See* Rule 6-507.1(H). No rule, however, permits the district court to remand or otherwise transfer jurisdiction back to the magistrate court for a retrial.

Further, as this Court has previously explained, a defendant “has no right to be tried in magistrate court rather than in district court” and a district court’s remand to a magistrate court for trial amounted to “refusing to exercise jurisdiction.” *Ahasteen*, 1998-NMCA-158, ¶¶ 27, 29.

{26} The district court’s review in an appeal from the magistrate court is not for legal error, *see Foster*, 2003-NMCA-099, ¶ 9; instead, as our Supreme Court recently stated, “[A]n appeal to the district court begins the trial process anew[.]” *State v. Cruz*, 2021-NMSC-015, ¶ 48, 486 P.3d 1. We, therefore, conclude that Defendant’s pretrial motion, seeking review of legal errors committed by the magistrate court and remand for a new trial in magistrate court, can only be remedied by a trial de novo in the district court.

#### CONCLUSION

{27} For the foregoing reasons, Defendant’s claims of error relating to the district court’s review of the magistrate court rulings are without merit. Further, because Defendant has raised no claim of error relating to his district court trial de novo, we affirm his convictions.

{28} **IT IS SO ORDERED.**

**JANE B. YOHALEM, Judge**

**WE CONCUR:**

**JENNIFER L. ATTREP, Judge**

**SHAMMARA H. HENDERSON, Judge**

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Mr. Herrmann joined the Firm in 2019. Keith is the Firm's regulatory whisperer and focuses his practice on utility and transportation regulatory issues before the New Mexico Public Regulation Commission, matters before Regulation and Licensing, NMED and EMNRD as well as transactional work related to public works and infrastructure.

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### Positions

#### **Staff Attorney - Expanded Volunteer Attorney Pool (E-VAP) Program**

The New Mexico State Bar Foundation seeks a staff attorney for the Expanded Volunteer Attorney Pool (E-VAP) Program. This position is full time - 40 hours per week. It includes an excellent benefits package and competitive salary for legal work in the non-profit sector. Main duties include providing legal information, legal advice, and brief services to E-VAP clients in accordance with E-VAP policies and procedures; assessing whether a case should be referred to a panel attorney or receive in-house services; and conducting legal workshops and fairs. Current licensure to practice law in the State of New Mexico required. Fluency in Spanish is a plus. \$60,000 to \$63,000 per year, depending on experience and qualifications. Generous benefits package included. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

#### **Various Attorney Positions**

The New Mexico Office of Attorney General is recruiting various attorney positions. The NMOAG is committed to attracting and retaining the best and brightest in the workforce. NMOAG attorneys provide a broad range of legal services for the State of New Mexico. Interested applicants may find listed positions by copying the URL address to the State Personnel website listed below and filter the data to pull all positions for Office of Attorney General. <https://www.spo.state.nm.us/view-job-opportunities-and-apply/applicationguide/>

#### **Associate Attorney-Family Law**

Maria Garcia Geer (Geer Wissel & Levy, P.A.) is seeking a qualified full-time associate attorney to join her established law firm. Prefer candidate have at least 3 years of experience in Family Law and an interest in law firm management but will consider all candidates. Benefits include health, dental, vision insurance, 401(k) plan, profit sharing and bonuses. Salary DOE. Replies are confidential. Please email your resume to Maria Geer c/o [chwilliams@gwlp.com](mailto:chwilliams@gwlp.com).

#### **Assistant District Attorney**

The Fifth Judicial District Attorney's office has immediate positions open for new and/or experienced attorneys. Salary will be based upon the New Mexico District Attorney's Salary Schedule with salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). These positions are located in the Carlsbad and Roswell offices. Please send resume to Dianna Luce, District Attorney, 100 N Love Street, Suite 2, Lovington, NM 88260 or email to [5thDA@da.state.nm.us](mailto:5thDA@da.state.nm.us)

#### **Associate Attorney**

Quinones Law Firm LLC, a well-established defense firm in search of a full-time associate attorney with 0-5 years' experience, preferably with current or past judicial clerkship experience. Primary practice in general defense litigation (employment law, civil rights, tort law). Please send resume to [quinoneslaw@cybermesa.com](mailto:quinoneslaw@cybermesa.com)

#### **Attorneys**

For more than sixty years, Butt Thornton & Baehr PC has been known as a law firm of quality and integrity. We are proud of the position of trust and respect the firm has earned in New Mexico's business, legal and governmental communities. Our commitment is to continue to meet the high standards that have earned us that reputation into the twenty-first century. BTB attorneys work together to analyze legal issues and provide legal counsel to clients. New attorneys are exposed to all areas of civil litigation, from legal research and drafting documents, to taking and defending depositions, trial preparation and trial, and working directly with clients. If you are licensed to practice law and are seeking an opportunity to enjoy the practice law with plenty of room for growth, please send letter of interest, resume, and writing samples to Ryan T. Sanders at [rtsanders@btblaw.com](mailto:rtsanders@btblaw.com).

#### **Litigation Attorney**

Cordell & Cordell, P.C., a domestic litigation firm with over 100 offices across 36 states, is currently seeking an experienced litigation attorney for an immediate opening in its office in Albuquerque, NM. The candidate must be licensed to practice law in the state of New Mexico, have minimum of 3 years of litigation experience with 1st chair family law preferred. The firm offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability, and life insurance, as well as 401K and wellness plan. This is a wonderful opportunity to be part of a growing firm with offices throughout the United States. To be considered for this opportunity please email your resume to Hamilton Hinton at [hhinton@cordelllaw.com](mailto:hhinton@cordelllaw.com)

### Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City, as well as represent the City in legal proceedings before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Current open positions include: Assistant City Attorney – Employment/Labor; Assistant City Attorney – Municipal Affairs; Assistant City Attorney – EHD – Air Quality. For more information or to apply please go to [www.cabq.gov/jobs](http://www.cabq.gov/jobs). Please include a resume and writing sample with your application.

### Deputy District Attorney, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

The Third Judicial District Attorney's Office in Las Cruces is seeking a Deputy District Attorney, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys. You will enjoy the convenience of working in a metropolitan area while gaining valuable trial experience alongside experienced Attorney's. Please see the full position descriptions on our website <http://donaanacountyda.com/> Submit Cover Letter, Resume, and references to Whitney Safranek, Human Resources Administrator at [wsafranek@da.state.nm.us](mailto:wsafranek@da.state.nm.us)

### Entry Level and Experienced Trial Attorney Positions

The Thirteenth Judicial District Attorney's Office is seeking both entry level and experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties. Enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, providing the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Fajardo @ [kfajardo@da.state.nm.us](mailto:kfajardo@da.state.nm.us) or visit our website for an application @ <https://www.13th.nmdas.com/> Apply as soon as possible. These positions will fill up fast!

### Associate Attorney

The firm of MYNATT MARTÍNEZ SPRINGER P.C. is looking for associates. Our practice focuses primarily on the defense of public entities and their employees but runs the gamut on all civil matters. The pay and benefits are competitive, and the billable hours are manageable. We are located in the City of Las Cruces, sometimes known as the Paris of the Rio Grande. Here, for the price of a small hovel in Santa Fe, you can purchase a moderate-sized mansion. The weather is beautiful, the food is spicy (we are right next to Hatch after all), the crime is low (looking at you Albuquerque), and the sunsets are stunning. If you are interested in making a change, email us at [rd@mmslawpc.com](mailto:rd@mmslawpc.com).

### Senior Assistant City Attorney (REVISED)

Two (2) fulltime professional positions, involving primarily civil law practice. Under the administrative direction of the City Attorney, represents and advises the City on legal matters pertaining to municipal government and other related duties, including misdemeanor prosecution, civil litigation and self-insurance matters. This position will focus primarily on land use, water issues, public utilities, nuisances and other City interests. Represents the city in acquisition of property through negotiated purchase or condemnation proceedings. Reviews and/or drafts responses or position statements regarding EEOC claims asserted against the City. Pursues bankruptcy claims and represents the City's interest in bankruptcy court. Assists with revenue recovery. Juris Doctor Degree AND three year's experience in a civil law practice; at least one year of public law experience preferred. Must be a member of the New Mexico State Bar Association, licensed to practice law in the state of New Mexico, and remain active with all New Mexico Bar annual requirements. Valid driver's license may be required or preferred. If applicable, position requires an acceptable driving record in accordance with City of Las Cruces policy. Individuals should apply online through the Employment Opportunities link on the City of Las Cruces website at [www.las-cruces.org](http://www.las-cruces.org). Resumes and paper applications will not be accepted in lieu of an application submitted via this online process. There are two current vacancies for this position. One position will be on a remote work assignment for up to one (1) year. This will be a continuous posting until filled. Applications may be reviewed every two weeks or as needed. SALARY: \$82,278.14 - \$119,257.01 / Annually CLOSING DATE: Continuous

### Senior Trial Attorney

Senior Trial Attorney wanted for immediate employment with the Seventh Judicial District Attorney's Office, which includes Catron, Sierra, Socorro and Torrance counties. Employment will be based primarily in Socorro County (Socorro, NM). Socorro is an hour drive from Albuquerque. Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Will also have full benefits and excellent retirement plan. Send resume to: Seventh District Attorney's Office, Attention: J.B. Mauldin, P.O. Box 1099, 302 Park Street, Socorro, New Mexico 87801. Or email to: [jbmauldin@da.state.nm.us](mailto:jbmauldin@da.state.nm.us).

### Commercial Liability Defense, Coverage Litigation Attorney P/T maybe F/T

Our well-established, regional, law practice seeks a contract or possibly full time attorney with considerable litigation experience, including familiarity with details of pleading, motion practice, and of course legal research and writing. We work in the area of insurance law, defense of tort claims, regulatory matters, and business and corporate support. A successful candidate will have excellent academics and five or more years of experience in these or highly similar areas of practice. Intimate familiarity with state and federal rule of civil procedure. Admission to the NM bar a must; admission to CO, UT, WY a plus. Apply with a resume, salary history, and five-page legal writing sample. Work may be part time 20+ hours per week moving to full time with firm benefits as case load develops. We are open to "of counsel" relationships with independent solo practitioners. We are open to attorneys working from our offices in Durango, CO, or in ABQ or SAF or nearby. Compensation for billable hours at hourly rate to be agreed, generally in the range of \$45 - \$65 per hour. Attorneys with significant seniority and experience may earn more. F/T accrues benefits. Apply with resume, 5-10p legal writing example to [revans@evanslawfirm.com](mailto:revans@evanslawfirm.com) with "NM Attorney applicant" in the subject line.

### Associate Attorney

Budagher & Tann, LLC, an Albuquerque law firm specializing in estate planning, probate, taxation, business, and real estate matters has an immediate opening for an associate attorney with 0-5 years of experience. We offer a collegial balanced work / life environment and do not track billable hours, vacation, or sick leave. Friendly working environment with opportunity to grow with the firm. Competitive salary and benefits. Please send letter of interest and resume to [adminassistant@budagherlaw.com](mailto:adminassistant@budagherlaw.com).

### **Chief Judge Jicarilla Apache Nation Dulce, New Mexico**

Live and work in beautiful Northern New Mexico or Southern Colorado! The Jicarilla Apache Nation is seeking a Chief Judge for the Nation's Court. Salary commensurate with qualifications and experience. Applicants should be graduates of an accredited Law School. Applicants should have significant knowledge and experience in Native American Culture and Traditions, as well as be well versed in Native American Legal Issues. Please submit resumes and letters of interest to Paul Hoffman, General Counsel, Jicarilla Apache Nation at phoffman@janlegal.com, with a copy to Edward Velarde, President Jicarilla Apache Nation, in care of Ouida Notsinneh, Secretary to the President at onotsinneh@janadmin.com. Excellent Benefit package including but not limited to full Medical, Prescription, Pension, 401(k), Dental, Life Insurance, vacation and sick leave. Prior Judicial Experience is preferred but is not an absolute requirement.

### **Civil Assistant U.S. Attorney(s) (AUSA) in the Albuquerque office**

The U.S. Attorney's Office for the District of New Mexico is recruiting one or more Civil Assistant U.S. Attorney(s) (AUSA) in the Albuquerque office. Civil AUSAs enforce federal civil rights, environmental statutes, combat fraud in the government, and defend agencies and employees in the federal government in civil litigation. The Civil Division seeks to be a force for that which is right, uphold the rule of law, and make fairness, equality, and impartiality the hallmarks of its work. Applicants must be able to independently manage all aspects of their assigned cases, including overall strategy, preparing pleadings and motions, taking depositions, preparing and answering discovery, negotiating settlements, and trying cases. If you are interested in serving the public and representing the people of the United States in a manner that will instill confidence in the fairness and integrity of the USAO and the judicial system, and have the experience necessary to do so, please apply before the vacancy closes on October 4, 2022. Qualification: Applicants must possess a J.D. Degree, be an active member in good standing of a bar (any jurisdiction) and have at least three (3) years of post-J.D. legal or other relevant experience. Salary: AUSA pay is administratively determined based, in part, on the number of years of professional attorney experience. The pay for this position is \$71,718 - \$174,590 including locality pay. The complete vacancy announcement may be viewed at <https://www.justice.gov/usao-nm/job/assistant-united-states-attorney> or at <https://www.usajobs.gov/job/676259300> (USAJobs). All applicants must apply through USAJobs.

### **Assistant City Attorney for the Municipal Affairs Division— Aviation Department**

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Municipal Affairs Division—Aviation Department. The Legal Department's team of attorneys provides a broad range of general counsel legal services to the City. This specific position will focus on representation of the City's interests with respect to Aviation Department legal issues and regulatory compliance. The position will be responsible for interaction with Aviation Department administration, the Albuquerque Police Department, various other City departments, boards, commissions, and agencies, and various state and federal agencies, including the Federal Aviation Administration and the Transportation Security Administration. The legal services provided will include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and drafting permits, easements, real estate contracts and procurement contracts and negotiating same, serving as records custodian for the Aviation Department, providing counsel on Inspection of Public Records Act requests and other open government issues, providing advice on City ordinances and State/Federal statutes and regulations, litigating matters as needed, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Aviation background is not essential, but any experience with aviation/airports will be considered. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please apply on line at [www.cabq.gov/jobs](http://www.cabq.gov/jobs) and include a resume and writing sample with your application.

### **Business Attorney**

Rodey, Dickason, Sloan, Akin & Robb, P.A. is accepting resumes for attorneys with 2-5 years' experience in corporate, real estate, and finance transactional matters for our Albuquerque and/or Santa Fe offices. Experience in corporate and municipal finance, business law, and real estate law is a plus. This position provides the opportunity to work on important and interesting transactions for A Level clients. Prefer practitioner with strong academic credentials, and law firm or government experience. Firm offers excellent benefit package. Salary commensurate with experience. Please send indication of interest and resume to Adrian Salazar, via email to [jobs@rodey.com](mailto:jobs@rodey.com) with "Business Attorney" in the subject line, or P.O. Box 1888, Albuquerque, NM 87103. All inquiries kept confidential.

### **Civil Litigation Attorney**

Rodey, Dickason, Sloan, Akin & Robb, P.A. is accepting resumes for attorneys with 2 to 8 years of Civil Litigation experience to work in our Albuquerque office. Qualifications: Ideal candidate must have strong academic credentials, excellent references, solid writing skills, and must be licensed in New Mexico. Rodey offers comprehensive benefits package, including health, dental and vision; professional development and multi-faceted mentoring program; FSA and HSA plan option(s); 401K plan/employer match; group life and long-term disability insurance; employee assistance program; wireless phone/services stipend. We are excited about our opportunity to partner with qualified candidates looking to advance their legal career. Please send cover letter, resume, law school transcript and writing sample and submit to Adrian Salazar, Human Resources Director, via email to [jobs@rodey.com](mailto:jobs@rodey.com) with "Litigation Attorney" in the subject line, or PO Box 1888 Albuquerque, NM 87103. All inquiries will be kept confidential. Rodey is an Equal Opportunity Employer.

### **Eleventh Judicial District Attorney's Office, Div II**

The McKinley County District Attorney's Office is seeking applicants for an Assistant Trial Attorney, Trial Attorney and Senior Trial Prosecutor. Senior Trial Attorney position and Trial Attorney position requires substantial knowledge and experience in criminal prosecution, rules of evidence and rules of criminal procedure; trial skills; computer skills; audio visual and office systems; ability to work effectively with other criminal justice agencies; ability to communicate effectively; ability to re-search/analyze information and situations. Assistant Trial Attorney position is an entry level position and requires basic knowledge and skills in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations, ability to draft legal documents; ability to work effectively with other criminal justice agencies. These positions are open to all persons who have knowledge in criminal law and who are in good standing with the New Mexico Bar or any other State bar. The McKinley County District Attorney's Office provides regular court-room practice and a supportive and collegial work environment. Salaries are negotiable based on experience. Submit letter of interest and resume to District Attorney Bernadine Martin, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter to [Bmartin@da.state.nm.us](mailto:Bmartin@da.state.nm.us). Position to commence immediately and will remain opened until filled.

### **Request For Proposal – Defense Legal Services**

Pueblo of Laguna seeks proposal from any law firm or individual practicing attorney to provide legal services for adult criminal defense or representation of juveniles in delinquency proceedings when there is conflict of interest or unavailability of regular defender. Reply by October 14, 2022. RFP details at: [www.lagunapueblo-nsn.gov/rfp\\_rfq/](http://www.lagunapueblo-nsn.gov/rfp_rfq/)

### **Experienced Litigator**

YLAW, P.C. is a local, AV-rated firm fortunate to defend quality clients in high stakes litigation. We are looking for an experienced litigator to join our dynamic team. You will touch every aspect of a case, including rapid response, investigation, discovery, hearings, mediations, and trials. Communication, reliability, initiative, and a thoughtful approach are cornerstones of the job. We offer a competitive salary, benefits, and partnership potential for the right candidate. Moreover, we have committed to a firm culture that embraces collaboration, collegiality, diversity, and respect. We work hard. We play hard. We are YLAW. Questions and letters of interest can be sent to [info@ylawfirm.com](mailto:info@ylawfirm.com). All inquiries will be kept strictly confidential.

### **Personnel Hearing Officer**

The City of Albuquerque is soliciting responses from qualified firms or attorneys interested in serving as contract Personnel Hearing Officer for personnel hearings under the City's Merit System Ordinances, §3-1-1 et seq. ROA 1994 and the Independent Hearing Office Ordinance Section §2-7-2 ROA 1994. The hearing officers may also provide services for other miscellaneous hearings under assorted City Ordinances. The full Request for Proposals can be accessed at: <https://cabq.bonfirehub.com/portal/?tab=openOpportunities> Proposals are due no later than January 4, 2023 @ 4:00pm Local Time.

### **Associate Attorney – Civil Litigation**

Sutin, Thayer & Browne is seeking a full-time Civil Litigation Associate. The candidate must have at least 3 years of experience relevant to civil litigation, and must have excellent legal writing, research, and verbal communication skills. Competitive salary and full benefits package. Visit our website <https://sutinfirm.com/> to view our practice areas. Send letter of interest, resume, and writing sample to [sor@sutinfirm.com](mailto:sor@sutinfirm.com).

### **Supreme Court of New Mexico Appellate Paralegal (at-will)**

Come work in the historic Supreme Court Building in Santa Fe, New Mexico! The New Mexico Supreme Court is accepting applications for an Appellate Paralegal for the Supreme Court Clerk's Office. The position of Appellate Paralegal is essential to the operation of the Chief Clerk's Office and for providing paralegal support to the Supreme Court. The Appellate Paralegal is responsible for maintaining the official roll of attorneys, including admission and licensure of attorneys, and for monitoring and processing attorney status changes; reviewing appellate opinions, decisions, and orders; maintaining and preparing Supreme Court rules committee orders and membership rosters; drafting orders, correspondence and other documents as may be assigned; managing files; calendaring and preparing statistical reports; communicating with other court staff and state agencies, and providing customer service and information to the public. The Appellate Paralegal must have good oral and written communications skills. A working knowledge and understanding of legal terminology, legal reference and citation sources, case management, grammar, punctuation, spelling, and editing are essential. For further details, see <https://www.nmcourts.gov/careers/>. To Apply: To apply for this position interested applicants should submit a letter of interest, resume, proof of education/transcripts, and New Mexico Judicial Branch Application for Employment to: Barbara J. Lujan Human Resources Administrator, 237 Don Gaspar, Room 12 Santa Fe, New Mexico 87501 Email: [supbjl@nmcourts.gov](mailto:supbjl@nmcourts.gov) PROOF OF EDUCATION IS REQUIRED. Applications may be emailed or mailed. Target Salary: \$19,616 - \$31,876 Deadline is October 12, 2022

### **Pueblo of Pojoaque General Counsel**

The Pueblo of Pojoaque is recruiting for General Counsel in the Legal Department. The Legal Department is the principle legal counsel of the Pueblo of Pojoaque and provides professional legal counsel and representation to the Pueblo and all Pueblo owned entities as specified by the Tribal Council. Serving at the pleasure of the Governor and Tribal Council, all General Counsels perform a full range of legal services requiring substantial knowledge and understanding of the Pueblo, its departments and businesses, and a general understanding of Indian law and tribal-federal-state relationships. The General Counsel focuses legal representation and work for the Pueblo on areas such as environmental issues including water and land use laws, infrastructure issues such as lease agreements, utilities, housing and commercial development and corporate transactions. Please submit resumes to Stacey Ofstehage at [sofstehage@pojoaque.org](mailto:sofstehage@pojoaque.org) or call 505-455-4500.

### **Prosecutor - Ute Mountain Ute Court of Indian Offenses**

The Bureau of Indian Affairs, Ute Mountain Ute Agency in beautiful Towaoc Colorado is seeking Prosecutor for the Ute Mountain Ute Court of Indian Offenses. The Prosecutor contributes to the mission of this office by assisting in the administration of judicial services within the Southwest Region's Court of Indian Offenses. The Prosecutor serves as an agent of the U.S. Government and is the official to investigate and prosecute a variety of offenses in the Court. Additionally, the Prosecutor will have a substantial caseload of crimes occurring on property owned by or held in trust for the Ute Mountain Ute Indian Tribe. The Superintendent of the Ute Mountain Agency will appoint the selected Prosecutor, per 25 CFR § 11.204 and also serve as the Supervisor. Indian preference will be given to qualified candidates. The minimum qualifications are three (3) years of legal experience and be licensed to practice in any state. To be considered, please submit a cover letter, current resume with references and if applicable a BIA Form 4432 (Indian Preference Form) to [Eric.Rodriguez@bia.gov](mailto:Eric.Rodriguez@bia.gov).

### **Managing Attorney**

DNA-People's Legal Services is a non-profit law firm providing high quality legal services to persons living in poverty on the Navajo, Hopi, and Jicarilla Apache Nations, and in parts of Northern Arizona, Northwest New Mexico, and Southern Utah. DNA is seeking to hire a Managing Attorney (State Licensed) for our Farmington, New Mexico office. The Farmington office Managing Attorney must be a graduate of an accredited law school, and must also be a member of the New Mexico Bar or able to gain admission to the New Mexico bar within one year by motion or reciprocity. Preference will be given to a state licensed attorney who is also licensed to practice law in Navajo, Hopi, or Jicarilla Apache Tribal Court. Preference is given to qualified Navajo and other Native American applicants. For a full position description and Employment Application go to: <https://dnalegalservices.org/career-opportunities-2/>. Submit an Employment Application, Resume, Cover Letter, Transcripts (if applicant graduated within the last two years) and Writing Sample (Attorney applicants only) to Email: [HResources@dna-legalservices.org](mailto:HResources@dna-legalservices.org) | Direct: 928.245.4575 Fax: 928.871.5036 (Faxed documents accepted)

### **Request For Proposal – Guardian Ad Litem Legal Services**

Pueblo of Laguna seeks proposals from any law firm or individual practicing attorney to provide Guardian ad litem services in cases involving child or adult neglect or abuse. Reply by October 14, 2022. RFP details at: [www.lagunapueblo-nsn.gov/rfp\\_rfq/](http://www.lagunapueblo-nsn.gov/rfp_rfq/)



## The Office of the Second Judicial District Attorney

The Office of the Second Judicial District Attorney improves the quality of life of the citizens of Bernalillo County by reducing crime through thoughtful enforcement of the law and the development of a criminal justice system. The Office is an Equal Employment Opportunity Employer and is seeking applicants for Assistant Trial Attorney, Trial Attorney, Senior Trial Attorney and Deputy District Attorney positions. Pursuant to the New Mexico District Attorney's Compensation Plan, the position of attorney is "At Will" and serves at the pleasure of the District Attorney. Salary is commensurate with experience. Resume, writing sample and three professional references must be received at the Office of the Second Judicial District Attorney. Attorneys must be licensed to practice law in the State of NM or be able to obtain a limited law license. Applicants selected for an interview must notify the Office of the Second Judicial District Attorney of the need for a reasonable accommodation due to a disability. Please submit resumes to: <https://berncoda.com/careers/>

## New Mexico Public Regulation Commission - Attorney III, Job ID- #126482

Position # 00034576, Santa Fe, Salary Range: \$71,061- \$113,698 annually, Pay Band - LH. This is an attorney position within the Office of General Counsel ("OGC") of the New Mexico Public Regulation Commission ("PRC" "Commission"). OGC acts as legal counsel to the Commissioners of the PRC, providing advice concerning adjudicatory, rulemaking and legislative matters, as well as internal agency issues. This position advises the Commission with regard to procedural and substantive legal issues involving the regulation of public utilities, telecommunications carriers and motor carriers. The attorney will prepare legal memoranda and appear at public meetings to present and provide advice on proposed orders. OGC attorneys also represent the Commission in court proceedings, including appeals before the New Mexico Supreme Court. The position may also draft agency policies and provide advice on internal agency administrative matters. Strong oral advocacy and writing skills are required. Experience in administrative law, regulatory/environmental law and litigation preferred. Minimum qualifications include a J.D. from an accredited school of law and four (4) years of experience in the practice of law. Must be licensed as an attorney by the Supreme Court of New Mexico or qualified to apply for a limited practice license. For more information on limited practice licenses, please visit: <http://nmexam.org/limited-license>. To apply, please visit [www.spo.state.nm.us](http://www.spo.state.nm.us).

## Attorney with 2-5 Years' Experience

Harrison, Hart & Davis, LLC, an Albuquerque-based law firm focusing on trials and appeals in wrongful death, class action, civil rights, and criminal defense cases, seeks an associate attorney with 2-5 years experience. Familiarity with federal court preferred. Judicial clerkship favored. We will also consider applications from more experienced attorneys looking to join our growing practice. We offer a competitive salary and benefits, including employer-paid health insurance, 401(k), and profit sharing. Applications should be submitted to [nick@harrisonhartlaw.com](mailto:nick@harrisonhartlaw.com), and must include a resume and at least one writing sample.

## Assistant Computer Systems Administrator – Albuquerque 2022-08

THE FEDERAL PUBLIC DEFENDER for the District of New Mexico is accepting applications for the position of Assistant Computer Systems Administrator. This position will be located in the Albuquerque office. The Federal Defender organization operates under authority of the Criminal Justice Act, 18 U.S.C. § 3006A, to provide defense services in federal criminal cases and related matters by appointment from the court. Requirements: Must be a high school graduate or equivalent. A bachelor's degree from an accredited college or university with concentration in computer or management information systems is desired, but not required. The ideal candidate will have experience in a law firm or with litigation support and software programs. Experience with Microsoft Server environments is highly preferred. Must have strong communication and organizational skills. Three years of technical experience with an emphasis in user support and training is required, along with experience with Microsoft Office and Windows 10-11. Experience installing and repairing automation hardware, software, and basic network administration experience is required. Experience with system and security log management is preferred. Extensive experience with word processing applications such as Microsoft Word. Experience supporting telephone and voice-mail systems is desired but not required. Candidate must be highly motivated, extremely detail oriented, and work well with a team. Duties include but are not limited to: Providing assistance to and receiving technical guidance from the Computer Systems Administrator (CSA); providing specialized and routine user support services including training, resolving hardware, software, peripheral equipment, and data communications systems problems; assisting with the installation, testing and user training on new and updated computer equipment and software; tracing and identifying sources of system failures and errors; security monitoring; perform systems maintenance

activities; conducting audits and evaluation of automated systems and existing software applications; assisting staff attorneys and investigators with the preparation of matters for trial using PC-based automation applications, and other types of litigation support. May also be responsible for keeping inventory of computer equipment or other office property, tracking cyclical replacement information, and discovery processing. Other duties as assigned. The ACSA reports directly to the CSA in Las Cruces and the Administrative Officer in Albuquerque. Periodic reports of work activities and regular meetings with supervisors to establish priorities for the office will be required. Regular travel may be required for training, to provide backup support, and to provide assistance with automation-related case preparation work. At least one week per year of travel is required to attend an annual CSA/ACSA training conference. Conditions of Employment: This is a high-sensitive position and requires a full-blown background check. Appointment to the position is contingent upon the successful completion of this background check and/or investigation, including an FBI name and fingerprint check. Employees of the Federal Public Defender are members of the judicial branch of government and are considered "at will" and do not carry the tenure rights of the competitive Civil Service. You must be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. All employees must be fully vaccinated for Covid-19 and provide proof of such prior to entrance on duty. Employees will be required to stay up-to-date and comply with the current and ongoing recommendations by the CDC and/or New Mexico Department of Health regarding Covid-19 vaccinations and boosters. Salary and Benefits: This position is full time with a comprehensive benefits package that includes: health and life insurance, vision and dental benefits, flexible spending accounts, paid time off, sick leave, leave for all federal holidays, participation in the Federal Employees' Retirement System, and participation in the Thrift Savings Plan with up to 5% government matching contributions. The starting salary for the position falls within a range of \$61,226 (IT-JSP-9, Step 1) to \$80,005 (JSP-12, Step 1). The salary of the successful applicant will be commensurate with the person's qualifications and experience. Salary is payable only by Electronic Funds Transfer (direct deposit). How to Apply: In one PDF document, please e-mail your resumé with cover letter and 3 references to: Michelle Dworak, Administrative Officer; [FDNM-HR@fd.org](mailto:FDNM-HR@fd.org). Reference 2022-08 in the subject. No phone calls please. Applications must be received by October 17, 2022. The Federal Public Defender is an equal-opportunity employer. Position is subject to the availability of funding.

## **Legal Assistant – Albuquerque 2022-07**

The Federal Public Defender for the District of New Mexico is accepting applications for a full-time Legal Assistant in the Albuquerque office. The federal defender organization operates under the Criminal Justice Act, 18 U.S.C. §3006A, to provide criminal defense and related help in federal courts. More than one position may be filled from this posting. Job Description: The Legal Assistant performs tasks such as the following: Performs the functions of a Legal Assistant to Assistant Defenders utilizing advanced knowledge of legal terminology, Word and information processing software. Understands district and circuit court rules and protocols. Edits and proofreads initial drafts, transcribes dictation, performs cite checking and assembles copies with attachments for filing and mailing. Responsible for electronic filing of pleadings; At times may receive, screen, and refer telephone and in-person callers. Answers general inquiries from knowledge of the defender organization's activities and program operations and obtains information from others as requested by the Assistant Defender(s); Screens incoming mail and handles some routine matters as authorized. Routes mail to appropriate destinations. Reviews outgoing mail for accuracy. Maintains correspondence control records; Prepares correspondence by either drafting from general instructions or typing in prescribed format. Prepares memoranda for signature by the Assistant Defender(s); Maintains calendars for the Assistant Defender(s), setting appointments as authorized. Arranges meetings and conferences, informing participants of date, time and location of meeting. Reminds the Assistant Defender(s) of appointments and commitments; Organizes case files for Assistant Defender(s) and is responsible for other case management functions as assigned, which may include: opening and closing files, recording future court appearances on the office master calendar and the personal calendars of Assistant Defender(s), and notifying clients of the dates and times of court appearances and appointments with the Assistant Defender(s) and defense experts. Experience Requirements: The ideal candidate will have a general understanding of the following: Office confidentiality issues, such as attorney/client privilege; The ability to analyze and apply relevant policies and procedures to office operations; Exercise good judgment; Have a general knowledge of office protocols and secretarial processes; Analyze and recommend practical solutions; Be proficient in Microsoft Word and Adobe Acrobat; Have the ability to communicate effectively with assigned attorneys, other staff, clients, court agency personnel, and the public; Have an interest in indigent criminal defense; Must possess excellent communication and interpersonal skills; Be self-motivated while also

excelling in a fast-paced team environment; Spanish fluency is a plus. Minimum qualifications are high school graduate or equivalent and at least three years legal secretary experience, federal criminal experience preferred. Starting salary ranges from a JSP-6 to JSP-8, currently yielding \$40,588 to \$49,950 annually depending on experience. Salary and Benefits: This position is full time with a comprehensive benefits package that includes: health and life insurance, vision and dental benefits, flexible spending accounts, paid time off, sick leave, leave for all federal holidays, participation in the Federal Employees' Retirement System, and participation in the Thrift Savings Plan with up to 5% government matching contributions. Salary is payable only by electronic funds transfer (direct deposit). Conditions of Employment: Appointment to the position is contingent upon the successful completion of a background check and/or investigation including an FBI name and fingerprint check. Employees of the Federal Public Defender are members of the judicial branch of government and are considered "at will." You must be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. All employees must be fully vaccinated for Covid-19 and provide proof of such prior to entrance on duty. Employees will be required to stay up-to-date and comply with the current and ongoing recommendations by the CDC and/or New Mexico Department of Health regarding Covid-19 vaccinations and boosters. Application Information: In one PDF document, please submit a statement of interest, resume and three references to: Michelle Dworak, Administrative Officer; FDNM-HR@fd.org; Reference 2022-07 in the subject. Applications must be received by October 17, 2022. Position(s) will remain open until filled and is subject to the availability of funding. The Federal Public Defender is an equal opportunity employer. We seek to hire individuals who will promote the diversity of the office and federal practice. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

### **Legal Services Intake Coordinator**

The New Mexico State Bar Foundation seeks a full-time Intake Coordinator to answer Bar Foundation Legal Service Programs incoming calls, conduct/complete intakes and establish case files in the Legal Services Programs electronic case management systems. The successful applicant must have excellent communication, customer service, and organizational skills. Minimum high school diploma required. Fluency in Spanish is a plus. Generous benefits package. \$16-\$18 per hour, depending on experience and qualifications. Qualified applicants should submit a cover letter and resume to HR@sbnm.org. Visit <https://www.sbnm.org/About-Us/Career-Center/State-Bar-Jobs> for full details and application instructions.

### **Legal Assistant**

Established civil trial litigation firm in Albuquerque seeks full-time legal assistant with 3-5 years' experience. Position requires a team player with strong word processing, organizational skills, excellent clerical, computer, and word processing skills. Knowledge of State and Federal District Court Rules and filing procedures, document and case management, ability to monitor, organize and distribute large volumes of information. Proficient in MS Word, Adobe Pro, and PowerPoint. Multitasking, stress management skills and a willingness to learn are essential for this position. Send resume and salary requirements to GUEBERT GENTILE & PIAZZA P.C., Attn: Cassandra A. Marquez, P.O. Box 93880, Albuquerque, NM 87199-3880. No Phone calls please.

### **Legal Assistant Supervisor – 13th Judicial District Attorney**

The Sandoval County Office of the 13th Judicial District Attorney in Bernalillo, New Mexico has an opening for a Supervising Legal Assistant. This position requires extensive knowledge of the criminal justice system and office organization and tasks such as trial preparation, maintenance of calendars, customer service and general office administrative functions. The position requires the supervision and training of a staff of 10-13 legal assistants. Preferred qualifications include at least 3 years working in a District Attorney's Office or related Criminal Justice organization. Advanced knowledge of the Case Management System (CMS) and supervisory experience. Salary commensurate with experience within the FY2023 New Mexico District Attorney Classification Salary Schedule. Please apply @ <https://www.13th.nmdas.com/> where you will have access to our application. Email applications to [kfajardo@da.state.nm.us](mailto:kfajardo@da.state.nm.us)

### **Paralegal**

Personal Injury/Civil litigation firm in the Journal Center area is seeking a Paralegal with minimum of 5+ years' experience, including current working knowledge of State and Federal District Court rules and filing procedures, trial preparation, document and case management, calendaring, and online research, is technologically adept and familiar with use of electronic databases and legal-use software. Qualified candidates must be organized and detail-oriented, with excellent computer and word processing skills and the ability to multi-task and work independently. Experience in summarizing medical records is a plus. Salary commensurate with experience. Please send resume with references and a writing sample to [paralegal3.bleuslaw@gmail.com](mailto:paralegal3.bleuslaw@gmail.com)

### Paralegal

Stiff, Garcia & Associates, LLC, a successful downtown insurance defense firm, seeks sharp, energetic paralegal. Must be a self-starter, detail-oriented, organized, and have excellent communication skills. A four-year degree or paralegal degree, and insurance defense and/or personal injury experience required. Bilingual in Spanish a plus. Please e-mail your resume and list of references to [agarcia@stiffllaw.com](mailto:agarcia@stiffllaw.com)

### Office Space

#### Sun Valley Suites – All Inclusive North Valley Office Suites

Locally owned and operated. Move-in ready suite ideal for a solo attorney. Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Visit our web-site [www.sunvalleyabq.com](http://www.sunvalleyabq.com) for more details or call Jaelyn Armijo at 505-343-2016.

#### Office Suites-ALL INCLUSIVE-

virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead and appear more professional. 505-796-9600/ [officealternatives.com](http://officealternatives.com).

#### Office Suite Space To Attorneys

I am seeking to offer office suite space to attorneys in the Northeast side of Abq off Tramway and Menaul who wish to share space with myself, another attorney. The space would be 500 per month and the floor plan is open and includes internet service. If interested, photos and a meet can be arranged. Call me at 505 610 6904. Thank you.

#### Single Office Space

Single Office Space available in downtown Santa Fe. Starting at \$750.00/month. Walking distance to State-Supreme Courts, Federal Court, City, County and State Offices. Contact C.I.R. Properties, LLC at 505-920-5804.

### Services

#### Engineering Forensics and Investigation Services

Expert Witness, Engineering Forensics and Investigation Services: I can get to the bottom of your engineering investigation and explain it, so everyone can understand. Call/v-mail/text/email today, Prof. Anthony Menicucci PhD-Engr., forensics engineer with experience testifying in Federal & State court. [anthony@armatech.us](mailto:anthony@armatech.us), 505-249-2075 for more info.

#### Contract Paralegal

Contract paralegal specializing in litigation, probates, wills, and trusts. I can draft various documents including various pleadings, demand letters, wills, trusts, contracts, etc. Contact: [paralegalnewmexico@gmail.com](mailto:paralegalnewmexico@gmail.com).

### Miscellaneous

#### Search For Will

##### Albuquerque / Rio Rancho Area

Searching for the will of GEORGE "CURTIS" CROSS. Please contact Erica Herold at 209-570-7862.

#### Want to Purchase

Want to Purchase minerals and other oil/gas interests. Send Details to: PO Box 13557, Denver, CO 80201

## 2022 Bar Bulletin Publishing and Submission Schedule

**The Bar Bulletin publishes twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.**

Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, three weeks prior to publication.**

**For more advertising information, contact:  
Marcia C. Ulibarri at 505-797-6058 or  
email [marcia.ulibarri@sbnm.org](mailto:marcia.ulibarri@sbnm.org)**

The publication schedule can be found at  
**[www.sbnm.org](http://www.sbnm.org).**

2022 State Bar of New Mexico

# MEMBER *appreciation* WEEK

October 17–21

Mark your calendars for our first Member Appreciation Week! We are excited to bring you a week of free resources, prizes and CLE credits! Visit [www.sbnm.org/22memberappreciation](http://www.sbnm.org/22memberappreciation) to learn more!

## MEMBERSHIP MONDAY

**Monday, Oct. 17**

Electronic newsletter that will include articles from the Professional Development Program, SBNM is Hear Podcast and professional development raffle prizes!

## TECHNOLOGY TUESDAY

**Tuesday, Oct. 18**

Electronic newsletter that will include articles from the Professional Development Program and highlights from the Member Benefits program!

## WELLNESS WEDNESDAY

**Wednesday, Oct. 19**

Electronic newsletter that will include an article from the Lawyers Assistance Program, #fit2practice event and well-being raffle prizes!

## THROWBACK THURSDAY

**Thursday, Oct. 20**

Electronic newsletter that will include an article from the Equity in Justice Program, Senior Lawyers Oral History highlights, and recognition of our 25 and 50 year attorneys!

## FIESTA FRIDAY

**Friday, Oct. 21**

**FREE CLE: 2 – 4 p.m.**

**Networking/Reception: 4 – 6 p.m.**

Join us for a **FREE** CLE presentation and reception! The CLE presentation will be available in person and via webcast. The State Bar Center will host up to 150 in-person attendees. All are welcome to attend the post-presentation networking/reception!



STUART TEICHER

### The Tech Never Stops • 2.0 EP

Why does Tik Tok matter to lawyers? Can deep fakes sink our clients? The legal issues with the latest trends in technology impact the world of legal ethics in ways that you might not have considered. In this program national speaker Stuart Teicher (“the CLE Performer”) talks about all of the latest dangers, including:

- Confidentiality and Rule 1.6
- Deception and Rule 8.4
- Supervision, Rules 5.1 and 5.3, and more



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